



Commonwealth of Virginia

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Memorandum

To: Members of the Virginia State Water Control Board
From: Elleanore Daub, Office of VPDES Permits
Date: March 11, 2020
Subject: VPDES Permit Regulation Final Exempt Amendments (9VAC25-31)

The attached regulatory amendments are presented to the Board for your consideration for adoption. The impetus for this final exempt action is to conform to the NPDES Application and Program Updates rule amendments, effective June 2019 (Federal Register Volume 84, Number 29). EPA expects the delegated states to incorporate the amendments into their regulations within one year of June 2019. The changes are primarily in the application requirements in 9VAC25-31-100. However, this action also incorporates other minor federal NPDES updates that have occurred over the past twelve years and one change for consistency with the Closure Plan and Demonstration of Financial Capability regulation 9VAC25-650-70. The changes are detailed in the Townhall Agency Background Document but have been determined to have no or little impact.

At your Board meeting on June 29, 2020, the staff will request that the Board adopt these amendments to 9VAC25-31.

The Attorney General's Office is reviewing the amendments for consistency with Section 2.2-4006 A 1 3 (Exemptions from requirements of this article) of the Administrative Process Act and Section 2.2-4006 A 4 c which allows for final exempt changes that are necessary to meet the requirements of federal law or regulation. EPA is also reviewing the amendments for consistency with federal requirements.

c: Cindy Berndt, DEQ - Office of Regulatory Affairs

ATTACHMENTS:

- Draft Virginia Regulatory Town Hall Document (TH-09)
- RIS Project – VPDES Permit Regulation Final Exempt



townhall.virginia.gov

**Exempt Action
Final Regulation
Agency Background Document**

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-31
Regulation title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Regulation
Action title	Amend the regulation to correspond with federal NPDES regulations and corrections of technical and style language
Final agency action date	
Date this document prepared	

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The primary reason for this action is to incorporate the June 12, 2019 NPDES Applications and Program Updates rule that applies to 40 CFR 122.21 and 124 into 9VAC25-31-100 (Application for a permit). The rule modernizes and clarifies permit applications by including items such as email information and NAICS codes. Some of the amendments of the NPDES Program Update Rule are not included in this final exempt action because they are inconsistent with state statute (web based public notice allowances for VPDES draft permits) or were specific to EPA and unnecessary in the VPDES Permit Regulation.

This action will also incorporate the September 18, 2014 NPDES Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting rule that applies to 40 CFR 122.21 and 122.44 into 9VAC25-31-100 (Application for a permit) and 9VAC25-31-220 (Establishing limitations, standards, and other permit conditions).

Clarified application sample type instructions in 9VAC25-31-100 H, I and K and for grabs and composites to correspond with 40 CFR 122.21 (h)(4)(i) language for non-process wastewater, 40 CFR 122.21(j)(4)(viii) language for POTWs.

Added new subdivision 9VAC25-31-380 B 4 to be consistent with the Closure Plan and Demonstration of Financial Capability regulation at 9VAC25-650-70 that requires a new owner to provide financial assurance prior to the transfer of the permit.

Include a phrase in 9VAC25-31-800 (Pretreatment program requirements: development and implementation by POTW) that provides legal authority to POTWs to enforce their pretreatment requirements to include a series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. This corresponds to 40 CFR 403.8 (Pretreatment Program Requirements: Development and implementation by POTW).

Other items included in this final agency action are: amending the entire VPDES permit regulation to make "storm water" (two words) to "stormwater" (one word) to be consistent with the USEPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity and also the VPDES ISWGP; updating two definitions in 9VAC25-31-10 (Definitions) to be consistent with 40 CFR 122.26 and the ISWGP; updating the 40 CFR reference to July 1, 2019 (9VAC25-31-25); including a reference to VELAP requirements in 9VAC31-190 J 5; updating reference to wastewater works operator requirements license regulations to 18VAC160-30 (Waterworks and Wastewater Works Operators Licensing Regulations in 9VAC25-31-200 C; and, correcting several citations throughout the regulation.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA – Administrative Process Act
CAFO – Combined Animal Feeding Operations
CFR – Code of Federal Regulations
CWA – Clean Water Act
ISWGP - Industrial Stormwater General Permit
NAICS – North American Industry Classification System
NPDES – National Pollutant Discharge Elimination System
USEPA – United States Environmental Protection Agency
VAC – Virginia Administrative Code
VELAP – Virginia Environmental Laboratory Accreditation Program
VPDES - Virginia Pollutant Discharge Elimination System

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandates are as follows:

1. Amendments in 40 CFR 122 and 124 adopted in the Federal Register Vol. 84, No. 29, February 12, 2019, entitled "NPDES: Applications and Program Updates", effective June 12, 2019;
2. Amendments in 40 CFR 122 adopted in the Federal Register Vol. 79, No. 160, August 19, 2014, entitled "NPDES: Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting", effective September 18, 2014;
3. Amendments in 40 CFR 122.21 adopted in the Federal Register, Vol. 72, No. 47, March 12, 2007, entitled "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the CWA; National Primary Drinking Water Regulations; and National Secondary Drinking Water Regulations; Analysis and Sampling Procedures" effective April 11, 2007;

4. Statutory Authority § 2.2-1105 of the Code of Virginia mandates environmental laboratory certification and is reflected in 1VAC30-45 Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories;

5. Amendment in 9VAC25-650-70 Closure plans and Demonstration of Financial Capability (Transfer of ownership or permit) effective December 26, 2019 (Virginia Register Vol. 36 Iss 6) as a result of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

6. Changes in style or corrections of technical errors are based on 40 CFR 122.21, 124.8, 136, 403.8, the NPDES General Permit for Stormwater Discharges from Industrial Activities, effective June 4, 2015 and the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151), Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30).

7. Section 2.2-4006 A 1 3 (Exemptions from requirements of this article) of the Administrative Process Act allows for final exempt changes in style or form or corrections of technical errors. Section 2.2-4006 A 4 c allows for final exempt changes that are necessary to meet the requirements of federal law or regulation, provided such regulations do not differ materially from those required by federal law or regulation.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On DATE the State Water Control Board adopted the amendments to 9VAC25-31.

All changes made in this regulatory action

Please detail all changes that are being made and the consequences of the changes. Detail new provisions and/or all changes to existing sections.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-31-10, 40, 100, 120, 130, 170, 200, 220,	NA	The term "storm water" is being replaced with one word "stormwater."	Consistency with the USEPA NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity and also the VPDES ISWGP (9VAC25-151). No impact.
9VAC25-31-10. Definitions.	NA	Municipal separate storm sewer definition.	Minor punctuation changes for consistency with the ISWGP (9VAC25-151) and 40 CFR 122.26(b)(8). No impact.
9VAC25-31-10. Definitions.	NA	Storm water discharge associated with industrial activity definition	Minor punctuation changes for consistency with the ISWGP (9VAC25-151). No impact.
9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.	NA	Federal references are dated July 2017.	Updated to federal references as of July 2019. Impact is to recognize federal changes to the most recent federal fiscal year.

9VAC25-31-100 D, G, K, and Q Application for a permit.	NA	No applicant email required for VPDES applications.	Applicant email required. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324. Some impact expected but industries and municipalities generally have email access.
9VAC25-31-100 D 1	NA	Persons are encouraged to submit applications in advance of the 90 or 180 day requirement.	The 90 day requirement is deleted. There is no 90 day requirement associated with this subsection. No impact.
9VAC25-31-100 F 4 Application for a permit.	NA	Reference is to subsection J or P of that section. J is application requirements for CAFOs and P is recordkeeping.	Reference changed to <u>K or Q</u> . This is a correction to correspond to the citations in <u>122.21(e)(2)</u> . No impact.
9VAC25-31-100 F 5 Application for a permit.	NA	No direct reference to require sufficiently sensitive methods for application data. However, 40 CFR 136 is referenced in the regulation and in all permits and 40 CFR 136 references the sufficiently sensitive methods requirements.	Direct reference to sufficiently sensitive methods requirements added in accordance with 40 CFR <u>122.21(e)(3)</u> . No impact as the VPDES permit regulation (9VAC25-31-750) and all VPDES permits expressly incorporate by reference 40 CFR <u>136</u> , Guidelines for Establishing Test Procedures for the Analysis of Pollutants. The provisions in Part 136 are applicable for pollutant quantitation in NPDES permit applications and NPDES permit reports. 40 CFR 136 stipulates that the test procedures used must be sufficiently sensitive as defined in 40 CFR <u>122.21(e)(3)</u> and <u>122.44(i)(1)(iv)</u> .
9VAC25-31-100 G Application for a permit.	NA	Information requirements refers to additional information required in subsections H through L. H through L are application requirements for existing process wastewater industries, nonprocess wastewater industries, CAFOs, POTWs, and new discharges. H through L contain additional application requirements.	Information requirements refers to additional information required in subsections H through L and Q through R of this section. Q through R are application requirements for sewage sludge management and cooling water intakes. These citations correspond to the NPDES federal regulation at <u>122.21 (f)</u> and is unknown why the citation to Q through R was left out of the VPDES regulation since all these sections contain additional application requirements. No impact.
9VAC25-31-100 G 3 Application for a permit.		No applicant NAICS codes required for VPDES applications.	Applicant NAICS codes required. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at

			<u>122.21(f)(3).</u>
9VAC25-31-100 G 9 and 10 Information requirements other than POTWs and other TWTDS	NA	These application information requirements do not exist.	<p>These new subdivisions 9 and 10 in application information ask for an indication of whether the facility uses cooling water and the source of the cooling water.</p> <p>Also added the question of whether the facility is requesting any of the variances allowed by 9VAC25-31-100 M, if known at the time of application. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(f)(9) and (10).</u></p> <p>These new questions will add a short amount of time when filling out a permit application. Small impact.</p>
9VAC25-31-100 H 5 Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.	NA	If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.	<p>Same requirement but added a reference for the requirement (as required by 9VAC25-31-230 B 2) must reflect the actual production of the facility. This corresponds to the reference cited in <u>122.21(g)(5).</u></p> <p>No impact.</p>
9VAC25-31-100 H 7 a Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.	NA	When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136	<p>Same requirement to use analytical methods under 40 CFR <u>136</u> but added a clarification "unless use of another method is required under subchapters 40 CFR Subchapters N or O." This corresponds to language in in 40 CFR <u>122.21(g)(7).</u> No impact.</p>
9VAC25-31-100 H 7 a Application requirements for existing manufacturing, commercial, mining, and	NA	Specifies that grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus.	<p>Clarified that when this paragraph requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli) and Enterococci (previously known as fecal streptococcus at 40 CFR <u>122.26(d)(2)(iii)(A)(3)),</u> or volatile organics, grab samples</p>

silvicultural dischargers.			must be collected for those pollutants. For all other pollutants, a 24-hour composite samples sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR <u>136</u> . This corresponds to language in 40 CFR <u>122.21(g)(7)</u> . Reflects existing requirements. No impact.
9VAC25-31-100 H 7 a Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.	NA	No instruction on averaging of grab samples to obtain the daily average or compositing allowances in the laboratory.	Added the instruction that results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR <u>136.3(e)</u>) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR <u>136.3(e)</u>) and that sample integrity is not compromised by compositing. This corresponds to language in <u>122.21(g)(7)</u> . Clarification. No impact.
9VAC25-31-100 H 7 e Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.	NA	Reference is to subdivisions 7c (3), (4) and (5) of this subsection.	Reference changed to subdivisions 7 e (3), (4), and (5) of this subsection. Corresponds to Notes 1,2 and 3 referenced in <u>122.21(g)(7)(v)(A)</u> . This is a correction. No impact.
9VAC25-31-100 H 7 j Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.		This instruction does not exist. The application form instructions associated with existing manufacturing, commercial, mining, and silvicultural dischargers specified 3 years.	Instructions for allowable age of quantitative data was added in a new subdivision: <i>j. Where quantitative data are required in subdivisions H 7 a through i of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.</i>

			This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(g)(7)(ix)</u> . Permittees would see this as a positive impact as it allows these types of industrial permittees to use older data than was allowed in previous applications. But this data age allowance is consistent with the data age allowance that has been acceptable for municipal facilities since 1999.
9VAC25-31-100 I 4 a Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers which discharge only nonprocess wastewater.	NA	Specifies that grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used.	Clarified that when this paragraph requires analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including E. coli), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in subsections I 4 a (1) through (11) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR 136. For a composite sample, only one analysis of the composite of aliquots is required. This corresponds to language in 40 CFR 122.21(h)(4)(i). Reflects existing requirements. No impact.
9VAC25-31-100 K 1 i Application requirements for new and existing POTWs and treatment works treating domestic sewage.	NA	No question asking for whether the applicant is operating or requesting to operate under a variance under subsection N of this section.	An indication of whether applicant is operating under or requesting to operate under a variance as specified at in subsection N of this section, if known at the time of application. Subsection N allows POTWs to request variances for effluent limitations under certain statutory provisions. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(j)(1)(ix)</u> . These new questions will add a short amount of time when filling out a permit application. Small impact.
9VAC25-31-100 K 4 a Application	NA	No instruction on when unbuilt facilities should submit effluent data for the application.	Added a statement that POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the

requirements for new and existing POTWs and treatment works treating domestic sewage.			commencement of discharge. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(j)(4)(i)</u> . This has a positive impact as there was no instruction how to handle pollutant application data submittal for unbuilt facilities.
9VAC25-31-100 K 4 i Application requirements for new and existing POTWs and treatment works treating domestic sewage.	NA	Specifies that grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform.	Specifies that when analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform (including E. coli), or volatile organics is required in paragraphs subdivision K 4 b, c and e of this section, grab samples must be collected for those pollutants. This corresponds to language in 122.21(j)(4)(viii). Reflects existing requirements. No impact.
9VAC25-31-100 K 5 a Application requirements for new and existing POTWs and treatment works treating domestic sewage.	NA	No instruction on when unbuilt facilities should submit whole effluent toxicity data for the application.	Added a statement that POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(j)(5)(i)</u> . This has a positive impact as there was no instruction how to handle WET testing application data submittal for unbuilt facilities.
9VAC25-31-100 K 6 a Application requirements for new and existing POTWs and treatment works treating domestic sewage.	NA	Specifies that applicants must submit the number of significant industrial users (SIUs) and nonsignificant categorical industrial users (CIUs) discharging to the POTW.	Specifies that applicants must submit the number of significant industrial users (SIUs) and nonsignificant categorical industrial users (NSCIUs) discharging to the POTW, including SIUs and NSCIUs that truck or haul waste, discharging to the POTW. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(j)(6)(i)</u> which adopted specific targeted changes to the NPDES application requirements for POTWs that would bring the NPDES regulations in concert with changes to the general

			pretreatment regulations at 40 CFR 403.3(v). No impact.
9VAC25-31-100 L Application requirements for new sources and new discharges.	NA	Reference is to subsection H of this section.	Reference changed to subsection I of this section. This corresponds to the citation in <u>122.21(k)</u> . This is a correction. No impact.
9VAC25-31-100 L 5 Application requirements for new sources and new discharges.	NA	Reference is to subdivisions H 4 a, b, and c of this section.	Reference changed to subdivisions I 4 a, b, and c of this section. This corresponds to the citation in <u>122.21(k)(5)</u> . This is a correction. No impact.
9VAC25-31-100 L 5 f Application requirements for new sources and new discharges (manufacturing, commercial, mining and silvicultural).	NA	No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection H of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;	No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection H of this section. However, the applicant need not complete those portions of subsection H of this section requiring tests which have already been performed and reported under the discharge monitoring requirements of the VPDES permit. This is to conform with the NPDES Program Update rule effective June 12, 2019, 84 FR 3324 at <u>122.21(k)(5)(vi)</u> which carries forth the instruction on when to turn in Form 2C data for unbuilt facilities. The two years after commencement of discharge was always the requirement but EPA changed it to 24 months to conform to other unbuilt facility requirements in the rule. Also the rule removes the reference to a permit holder's presumed gender. No impact. Reference changed to subsection H of this section. This corresponds to the citation in <u>122.21(k)(5)(vi)</u> . This is a correction. No impact.
9VAC25-31-190 J 5 Conditions	NA	This new subdivision J 5 does not exist. The subsection specifies	The new subdivision J 5 specifies that samples taken shall be analyzed by a certified laboratory

applicable to all permits.		monitoring and records requirements.	under 1VAC30-45 Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories (Statutory Authority § <u>2.2-1105</u> of the Code of Virginia). These certified laboratory regulations have been required and implemented for VPDES permittees since January 2012 under VELAP. This is a clarification to reflect existing regulations. No impact.
9VAC25-31-200 C Additional conditions applicable to specified categories of VPDES permits.	NA	Wastewater works operator requirements license regulations reference is to 18VAC160-20 (Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations.	Wastewater works operator requirements license regulations reference corrected to 18VAC160-30 (Waterworks and Wastewater Works Operators Licensing Regulations). This is a correction as 18VAC160-20 was repealed. No impact.
9VAC25-31-220 I 4 d. Establishing limitations, standards, and other permit conditions.	NA	No direct reference to require sufficiently sensitive methods for monitoring requirements. However, 40 CFR 136 is referenced in the regulation and in all permits and 40 CFR 136 references the sufficiently sensitive methods requirements.	Direct reference to sufficiently sensitive methods requirements added in accordance with 40 CFR <u>122.44(i)(1)(iv)</u> . No impact as the VPDES permit regulation (9VAC25-31-750) and all VPDES permits expressly incorporate by reference 40 CFR <u>136</u> , Guidelines for Establishing Test Procedures for the Analysis of Pollutants. The provisions in Part 136 are applicable for pollutant quantitation in NPDES permit applications and NPDES permit reports. 40 CFR <u>136.1 (c)</u> stipulates that the test procedures used must be sufficiently sensitive as defined in 40 CFR <u>122.21(e)(3)</u> and <u>122.44(i)(1)(iv)</u> .
9VAC25-31-280 B 11 Fact sheet.	NA	Reference is to 9VAC25-31-100 J or P.	Reference changed to 9VAC25-31-100 K or Q to correspond with references given in 40 CFR <u>124.8(b)(9)</u> . This is a correction. No impact.
9VAC25-31-380 B 4	NA	This new subdivision B 4 does not exist. The subsection specifies how automatic ownership transfers may occur.	The new subdivision B 4 specifies that automatic ownership transfers may occur if the new owner or operator has demonstrated compliance with the financial

			assurance regulation 9VAC25-650-70. This is for consistency with the Closure Plan and Demonstration of Financial Capability regulation which requires the new owner to provide financial assurance prior to the transfer of the permit. No impact as this requirement is currently effective in 9VAC25-650-70.
9VAC25-31-800 F 1 Pretreatment program requirements: development and implementation by POTW.	NA	The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of Sections 307(b), (c) and (d), and 402(b) (8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute, or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state law.	The underlined statement was amended to correspond with language in 40 CFR <u>403.8(f)(1)</u> Pretreatment Program Requirements: Development and Implementation by POTW. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a <u>statute, ordinance, or series of contracts or joint powers agreements</u> which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. No impact as this is a reflection of existing procedures that have been following the federal law..

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Most of these amendments apply to individual permits. The agency offers general permit coverage for many industries. That is the primary regulatory method the agency uses to minimize adverse impact on small businesses. Many of these amendments are corrections and clarifications that have no impact on small business.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and

supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulatory action will not impact the institution of the family and family stability.

**STATE WATER CONTROL BOARD
VPDES Permit Regulation Final Exempt**

**CHAPTER 31
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT
REGULATION**

Part I

Definitions and General Program Requirements

9VAC25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC § 1251 et seq.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Director of the Department of Environmental Quality.

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9VAC25-31-830.

"Approved program" or "approved state" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123.

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this chapter. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

- a. 700 mature dairy cows, whether milked or dry;
- b. 1,000 veal calves;
- c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- d. 2,500 swine each weighing 55 pounds or more;
- e. 10,000 swine each weighing less than 55 pounds;
- f. 500 horses;
- g. 10,000 sheep or lambs;
- h. 55,000 turkeys;
- i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- a. The type and number of animals that it stables or confines falls within any of the following ranges:
 - (1) 200 to 699 mature dairy cattle, whether milked or dry;
 - (2) 300 to 999 veal calves;

- (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (4) 750 to 2,499 swine each weighing 55 pounds or more;
- (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (6) 150 to 499 horses;
- (7) 3,000 to 9,999 sheep or lambs;
- (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;
- (12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or
- (2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the board designates under 9VAC25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

- 1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:
 - a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
 - b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or
- 2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:
 - a. Closed ponds which discharge only during periods of excess run-off; or
 - b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority if the submission has not been approved.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is the operator.

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-117, and Public Law 100-4.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface run-off which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department or an equivalent form developed by the permittee and approved by the board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Existing source" means any source which is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"General permit" means a VPDES permit authorizing a category of discharges under the CWA and the law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 pursuant to § 311 of the CWA.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial residual" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial user" or "user" means a source of indirect discharge.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this chapter are not considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this chapter, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to an AFO, land under the control of an AFO owner or operator that is owned, rented, or leased to which manure, litter, or process wastewater from the production area may be applied.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback area, where biosolids may be applied.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Log sorting facilities" and "log storage facilities" mean facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the regional administrator in conjunction with the board.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors normally associated with biosolids or sewage sludge.

"Man-made" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Municipal separate storm sewer" means a conveyance or system of conveyances, ~~including~~ (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, ~~storm water, stormwater~~ or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA, CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying ~~storm water, stormwater~~; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the CWA. The term includes an approved program.

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit, and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA which are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility, or installation is constructed at a site at which no other source is located;
b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.
3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:
 - a. Begun, or caused to begin, as part of a continuous on-site construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other

sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural ~~storm water~~ stormwater run-off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"POTW treatment plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A.

"Privately owned treatment works" or "PVOTW" means any device or system which is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated ~~storm water~~ stormwater. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the law, the CWA and regulations.

"Secondary industry category" means any industry category which is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use of biosolids, or disposal of sewage sludge.

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:

- a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and
- b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9VAC25-31-780 and 40 CFR chapter I, subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

- a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
- b. The industrial user annually submits the certification statement required in 9VAC25-31-840 together with any additional information necessary to support the certification statement; and
- c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any

time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with ~~storm-water~~ stormwater discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of biosolids use or sewage sludge disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for biosolids use or sewage sludge disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use of biosolids or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA agreement" means an agreement between the regional administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the law.

"State Water Control Law" or "Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

~~"Storm water" means storm water.~~ "Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

~~"Storm water"~~ "Stormwater" discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying ~~storm water~~ stormwater and ~~which that~~ is directly related to manufacturing, ~~processing, processing~~ or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in this definition, the term ~~includes, but is not limited to, storm water~~ includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material

handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to ~~storm-water~~stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking ~~lots~~lots, as long as the drainage from the excluded areas is not mixed with ~~storm-water~~stormwater drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to ~~storm-water~~stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category ~~40~~10 of this definition);
2. Facilities classified as Standard Industrial Classifications (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except ~~283~~283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 (Office of Management and Budget (OMB) SIC Manual, 1987);
3. Facilities classified as ~~Standard Industrial Classifications~~SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate ~~SMCRA~~Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge ~~storm-water~~stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, ~~byproducts, byproducts~~ or waste products located on the site of such ~~operations; operations~~ (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable ~~owner/operator; owner or operator~~; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);
4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);
5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (~~42- USC § 6901 et seq.~~);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as ~~Standard Industrial Classification~~ SIC 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as ~~Standard Industrial Classifications~~ SIC 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and

10. Facilities under ~~Standard Industrial Classifications~~ SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to the EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding the Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on §§ 301(c), 301(g), 301(h), 301(i), or 316(a) of the CWA.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES application" or "application" means the standard form or forms, including any additions, revisions or modifications to the forms, approved by the administrator and the board for applying for a VPDES permit.

"Wastewater," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-31-20. Purpose.

This chapter delineates the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and the State Water Control Law.

9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated in this chapter that regulation shall be as it exists and has been published in the July 1, 2017, July 1, 2019 update. ~~The final rules published in the Federal Register on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.~~

9VAC25-31-30. Federal effluent guidelines.

A. The following federal regulations are hereby incorporated by reference:

Airport Deicing Operations - 40 CFR Part 449

Aluminum Forming - 40 CFR Part 467

Asbestos Manufacturing - 40 CFR Part 427

Battery Manufacturing - 40 CFR Part 461

Canned and Preserved Fruits and Vegetables - 40 CFR Part 407

Canned and Preserved Seafood - 40 CFR Part 408
Carbon Black Manufacturing - 40 CFR Part 458
Cement Manufacturing - 40 CFR Part 411
Centralized Waste Treatment - 40 CFR Part 437
Coal Mining - 40 CFR Part 434
Coil Coating - 40 CFR Part 465
Concentrated Aquatic Animal Production - 40 CFR Part 451
Copper Forming - 40 CFR Part 468
Dairy Products - 40 CFR Part 405
Dental Offices - 40 CFR Part 441
Electrical and Electronic Components - 40 CFR Part 469
Electroplating - 40 CFR Part 413
Explosives Manufacturing - 40 CFR Part 457
Feedlots - 40 CFR Part 412
Ferroalloy Manufacturing - 40 CFR Part 424
Fertilizer Manufacturing - 40 CFR Part 418
Glass Manufacturing - 40 CFR Part 426
Grain Mills - 40 CFR Part 406
Gum and Wood Chemicals Manufacturing - 40 CFR Part 454
Hospitals - 40 CFR Part 460
Ink Formulating - 40 CFR Part 447
Inorganic Chemicals Manufacturing - 40 CFR Part 415
Iron and Steel Manufacturing - 40 CFR Part 420
Landfills - 40 CFR Part 445
Leather Tanning and Finishing - 40 CFR Part 425
Meat Products - 40 CFR Part 432
Metal Finishing - 40 CFR Part 433
Metal Molding and Casting - 40 CFR Part 464
Metal Products and Machinery - 40 CFR Part 438
Mineral Mining and Processing - 40 CFR Part 436
Nonferrous Metals - 40 CFR Part 421
Nonferrous Metal Forming - 40 CFR Part 471
Oil and Gas Extraction - 40 CFR Part 435
Ore Mining and Dressing - 40 CFR Part 440
Organic Chemicals, Plastics and Synthetic Fibers - 40 CFR Part 414
Paint Formulating - 40 CFR Part 446
Paving and Roofing Materials - 40 CFR Part 443
Pesticide Chemicals - 40 CFR Part 455
Petroleum Refining - 40 CFR Part 419
Pharmaceutical Manufacturing - 40 CFR Part 439
Phosphate Manufacturing - 40 CFR Part 422

Photographic Processing - 40 CFR Part 459
 Plastics Molding and Forming - 40 CFR Part 463
 Porcelain Enameling - 40 CFR Part 466
 Pulp, Paper and Paperboard - 40 CFR Part 430
 Rubber Processing - 40 CFR Part 428
 Secondary Treatment - 40 CFR Part 133
 Soaps and Detergents - 40 CFR Part 417
 Steam Electric Power Generation - 40 CFR Part 423
 Sugar Processing - 40 CFR Part 409
 Textile Mills - 40 CFR Part 410
 Timber Products - 40 CFR Part 429
 Toxic Pollutant Effluent Standards - 40 CFR Part 129
 Transportation Equipment Cleaning - 40 CFR Part 442
 Waste Combustors - 40 CFR Part 444

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to § 2.2-4007 C of the Code of Virginia.

9VAC25-31-40. Exclusions.

The following discharges do not require VPDES permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.
2. Discharges of dredged or fill material into surface waters which are regulated under § 404 of the CWA.
3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.
4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including ~~storm-water~~ stormwater run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal

feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the board may otherwise require.

9VAC25-31-50. Prohibitions.

A. Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses; or

3. Discharge stormwater into state waters from municipal separate storm sewer systems or land disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the law, or regulations promulgated under the CWA or the law;

2. When the applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;

3. When the regional administrator has objected to issuance of the permit;

4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;
8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines permit issuance to be in the public interest; or
 - b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the law and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
 - a. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 9VAC25-31-280.

9VAC25-31-60. Effect of a permit.

A. Compliance with a permit.

1. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA and standards for biosolids use or sewage sludge disposal under § 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the law and with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in this chapter.
2. Compliance with a permit condition which implements a particular standard for biosolids use or sewage sludge disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for biosolids use or sewage sludge disposal pursuant to the law and §§ 309 and 405(e) of the CWA.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

9VAC25-31-70. Continuation of expiring permits.

A. The permit shall expire at the end of its term, except that the conditions of an expired permit continue in force until the effective date of a new permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and
2. The board, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit which has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

9VAC25-31-80. Confidentiality of information.

A. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 and § 62.1-44.21 of the Code of Virginia).

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Permit applications, permits, and effluent data.

C. Information required by VPDES application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

9VAC25-31-90. Guidance documents.

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the VPDES permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is consistent with applicable regulations and the State Water Control Law.

Part II

Permit Applications and Special VPDES Permit Programs

9VAC25-31-100. Application for a permit.

A. Duty to apply. The following shall submit a complete application to the department in accordance with this section. The requirements for concentrated animal feeding operations are described in subdivisions C 1 and 2 of 9VAC25-31-130.

1. Any person who discharges or proposes to discharge pollutants; and
2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit.

B. Exceptions. The following are not required to submit a complete application to the department in accordance with this section unless the board requires otherwise:

1. Persons covered by general permits;
2. Persons excluded from the requirement for a permit by this chapter; or
3. A user of a privately owned treatment works.

C. Who applies.

1. The owner of the facility or operation.
2. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.
3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land application by the operator may be authorized by the owner's permit.

D. Time to apply.

1. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of ~~storm-water~~stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of ~~storm-water~~stormwater associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the ~~90 or 180 day requirements~~180 day requirement to avoid delay. New discharges composed entirely of ~~storm-water~~stormwater, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose biosolids use or sewage sludge disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its biosolids use or sewage sludge disposal practice or practices, using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, electronic mail address and ownership status;

(3) A description of the biosolids use or sewage sludge disposal practices. Unless the biosolids meets the requirements of subdivision Q 9 d of this section, the description must include the name and address of any facility where biosolids or sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the biosolids or sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for biosolids use or sewage sludge disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

E. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

F. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection ~~J or PK~~ or Q of this section and the EPA has

disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. Except as specified in subdivision (b) below, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR part 136 or required under 40 CFR chapter I, subchapter N (Effluent Guidelines and Standards) or O (Sewage Sludge).

(a) For the purposes of this requirement, a method approved under 40 CFR part 136 or required under 40 CFR chapter I, subchapter N or O is "sufficiently sensitive" when:

(1) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

(2) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(3) The method has the lowest ML of the analytical methods approved under 40 CFR part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

(b) When there is no analytical method that has been approved under 40 CFR part 136, required under 40 CFR chapter I, subchapter N or O, and is not otherwise required by the Director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.

5.6. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of biosolids shall be complete unless it contains certification from the governing body of the locality in which the biosolids is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

6.7. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-31-420 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

G. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections H through L and Q through R of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC and NAICS codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, electronic mail address, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under RCRA (42 USC § 6921);
 - b. UIC program under SDWA (42 USC § 300h);
 - c. VPDES program under the CWA and the law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);
 - e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
 - f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);
 - g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);
 - h. Dredge or fill permits under § 404 of the CWA; and
 - i. Other relevant environmental permits, including state permits;
7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; ~~and~~
8. A brief description of the nature of the ~~business-business~~;
9. An indication of whether the facility uses cooling water and the source of the cooling water; and
10. An indication of whether the facility is requesting any of the variances in subsection M of this section, if known at the time of application.

H. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of subsection I of this section, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.
2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.
3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and ~~storm water~~ stormwater run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the

ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of ~~storm water~~stormwater may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for ~~storm water~~stormwater run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the ~~facility~~facility as required by 9VAC25-31-230 B 2.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. Information on the discharge of pollutants specified in this subdivision (except information on ~~storm water~~stormwater discharges which is to be provided as specified in 9VAC25-31-120).

a. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part ~~136~~136 unless use of another method is required under subchapters 40 CFR Subchapters N or O. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subdivisions 7 e and f of this subsection that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. ~~Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. When this paragraph requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli) and Enterococci (previously known as fecal streptococcus at 40 CFR 122.26 (d)(2)(iii)(A)(3)), or volatile organics, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR 136. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water stormwater discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. Results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3 (e)) may be composited in the laboratory, provided that container, preservation, and holding time~~

requirements are met (see Table II at 40 CFR 136.3(e)) and that sample integrity is not compromised by compositing.

b. For ~~storm-water~~stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a ~~storm-water~~stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for ~~storm-water~~stormwater discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for ~~storm-water~~stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For ~~storm-water~~stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all ~~storm-water~~stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated ~~storm-water~~stormwater run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

- (1) Biochemical oxygen demand (BOD₅);
- (2) Chemical oxygen demand;
- (3) Total organic carbon;
- (4) Total suspended solids;
- (5) Ammonia (as N);
- (6) Temperature (both winter and summer); and
- (7) pH.

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater, except as indicated in subdivisions ~~7 e (3), (4), and (5) of this subsection:~~ 7 e (3), (4), and (5) of this subsection:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

(3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES Application Form 2C are suspended as they apply to coal mines.

(4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(b) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

(c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

(b) Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

(c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the petroleum refining industrial category.

(d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430);

testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

(e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

f. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

h. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

i. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl)

phosphorothioate (Ronnell); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

j. Where quantitative data are required in subdivisions H 7 a through i of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

I. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for ~~storm-water~~stormwater discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. ~~Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including *E. coli*), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in subsections 1 4 a (1) through (11) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four (4) grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required.~~ New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD₅).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water.

However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for ~~storm water~~ stormwater run-off, leaks, or spills);
6. A brief description of any treatment system used or to be used;
7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;
8. Signature of certifying official under 9VAC25-31-110; and
9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:
 - a. The name of the owner or operator;
 - b. The facility location and mailing address;
 - c. Latitude and longitude of the production area (entrance to the production area);
 - d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision G 7 of this section;
 - e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
 - f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);
 - g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;
 - h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and
 - i. For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C 5 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.
2. For concentrated aquatic animal production facilities:
 - a. The maximum daily and average monthly flow from each outfall;
 - b. The number of ponds, raceways, and similar structures;
 - c. The name of the receiving water and the source of intake water;
 - d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

- e. The calendar month of maximum feeding and the total mass of food fed during that month; and
- f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

- a. Name, mailing address, and location of the facility for which the application is submitted;
- b. Name, mailing address, ~~and telephone number~~ and electronic mail address of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;
- c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:
 - (1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;
 - (2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);
 - (3) NPDES program under the Clean Water Act (CWA);
 - (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - (5) Nonattainment program under the Clean Air Act;
 - (6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (8) Dredge or fill permits under § 404 of the CWA; and
 - (9) Other relevant environmental permits, including state permits;
- d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;
- e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, ~~and~~ phone number and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, electronic mail address and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent.

i. An indication of whether applicant is operating under or requesting to operate under a variance as specified in subsection N of this section, if known at the time of application.

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

- (1) Treatment plant area and unit processes;
- (2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;
- (3) Each well where fluids from the treatment plant are injected underground;
- (4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;
- (5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and
- (6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic:

- (1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and
- (2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

- (1) The outfall number of each outfall affected;
- (2) A narrative description of each required improvement;
- (3) Scheduled or actual dates of completion for the following:
 - (a) Commencement of construction;
 - (b) Completion of construction;
 - (c) Commencement of discharge; and
 - (d) Attainment of operational level; and
- (4) A description of permits and clearances concerning other federal or state requirements.

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

- (1) Outfall number;
- (2) State, county, and city or town in which outfall is located;
- (3) Latitude and longitude, to the nearest second;
- (4) Distance from shore and depth below surface;
- (5) Average daily flow rate, in million gallons per day;
- (6) The following information for each outfall with a seasonal or periodic discharge:
 - (a) Number of times per year the discharge occurs;
 - (b) Duration of each discharge;

- (c) Flow of each discharge; and
- (d) Months in which discharge occurs; and
- (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.
- b. The following information, if known, for each outfall through which effluent is discharged to surface waters:
 - (1) Name of receiving water;
 - (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
 - (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
 - (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).
- c. The following information describing the treatment provided for discharges from each outfall to surface waters:
 - (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
 - (a) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);
 - (b) Design suspended solids (SS) removal (percent); and, where applicable;
 - (c) Design phosphorus (P) removal (percent);
 - (d) Design nitrogen (N) removal (percent); and
 - (e) Any other removals that an advanced treatment system is designed to achieve.
 - (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).
- 4. Effluent monitoring for specific parameters.
 - a. As provided in subdivisions 4 b through 4 k of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge;
 - b. All applicants must sample and analyze for the following pollutants:
 - (1) Biochemical oxygen demand (BOD₅ or CBOD₅);
 - (2) Fecal coliform;
 - (3) Design flow rate;
 - (4) pH;
 - (5) Temperature; and
 - (6) Total suspended solids.
 - c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:
 - (1) Ammonia (as N);

- (2) Chlorine (total residual, TRC);
- (3) Dissolved oxygen;
- (4) Nitrate/Nitrite;
- (5) Kjeldahl nitrogen;
- (6) Oil and grease;
- (7) Phosphorus; and
- (8) Total dissolved solids.

d. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

e. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J, and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

f. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

g. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

h. All existing data for pollutants specified in subdivisions 4 b through 4 f of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

i. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing VPDES permit. ~~Grab samples must be used for~~ When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform (including *E. coli*), or volatile organics is required in subdivision K 4 b, c and e of this section, grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

j. The effluent monitoring data provided must include at least the following information for each parameter:

- (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
- (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;
- (3) The analytical method used; and
- (4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

k. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if

the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136, as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and nonsignificant categorical industrial users (CIIUs) discharging to the POTW(NSCIIUs), including SIUs and NSCIIUs that truck or haul waste, discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261, if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

- (b) State, county, and city or town in which outfall is located;
- (c) Latitude and longitude, to the nearest second;
- (d) Distance from shore and depth below surface;
- (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and
- (f) The number of storm events monitored in the past year;
- (2) The following information about CSO overflows from each outfall:
 - (a) The number of events in the past year;
 - (b) The average duration per event, if available;
 - (c) The average volume per CSO event, if available; and
 - (d) The minimum rainfall that caused a CSO event, if available, in the last year;
- (3) The following information about receiving waters:
 - (a) Name of receiving water;
 - (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and
 - (c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and
 - (4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).
- 9. All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.
- 10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.
- 11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of ~~subsection H~~subsection I of this section or new discharges of ~~storm water~~stormwater associated with industrial activity which are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

- 1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;
- 2. The expected date of commencement of discharge;
- 3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;
- b. A line drawing of the water flow through the facility with a water balance as described in subdivision H 2;

- c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for ~~storm water~~stormwater run-off, spillage, or leaks);
4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;
5. The requirements in ~~subdivisions H~~subdivisions I 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.
- a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements:
- (1) Biochemical oxygen demand (BOD).
 - (2) Chemical oxygen demand (COD).
 - (3) Total organic carbon (TOC).
 - (4) Total suspended solids (TSS).
 - (5) Flow.
 - (6) Ammonia (as N).
 - (7) Temperature (winter and summer).
 - (8) pH.
- b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants).
- c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:
- (1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);
 - (2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

- (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);
- (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);
- (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);
- (4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnol) (CAS #299-84-3);
- (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or
- (6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than ~~two years~~ 24 months after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in ~~subsection G~~ subsection H of this section. However, the applicant need not complete those portions of ~~subsection G~~ subsection H of this section requiring tests which ~~he~~ have already been performed and reported under the discharge monitoring requirements of ~~his~~ the VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

M. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

N. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

O. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections M and N of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions M 2 a (2) or M 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

P. Recordkeeping. Except for information required by subdivision D 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

Q. Sewage sludge management. All TWTDS subject to subdivision D 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

- a. The name, mailing address, and location of the TWTDS for which the application is submitted;
- b. Whether the facility is a Class I Sludge Management Facility;
- c. The design flow rate (in million gallons per day);
- d. The total population served;
- e. The TWTDS's status as federal, state, private, public, or other entity;
- f. The name, mailing address, ~~and telephone number~~ telephone number, and electronic mail address of the applicant; and
- g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
- b. UIC program under the Safe Drinking Water Act (SDWA);

- c. NPDES program under the Clean Water Act (CWA);
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - e. Nonattainment program under the Clean Air Act;
 - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - g. Dredge or fill permits under § 404 of the CWA;
 - h. Other relevant environmental permits, including state or local permits.
3. All applicants must identify any generation, treatment, storage, land application of biosolids, or disposal of sewage sludge that occurs in Indian country.
 4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
 - a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
 - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.
 5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.
 6. All applicants must submit an odor control plan that contains at minimum:
 - a. Methods used to minimize odor in producing biosolids;
 - b. Methods used to identify malodorous biosolids before land application (at the generating facility);
 - c. Methods used to identify and abate malodorous biosolids that have been delivered to the field, prior to land application; and
 - d. Methods used to abate malodor from biosolids if land applied.
 7. The applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:
 - a. When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source.
 - b. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
 - c. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
 - d. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490, 40 CFR Part 503 (March 26, 2007) and 40 CFR Part 136 (March 26, 2007).

- e. The monitoring data provided must include at least the following information for each parameter:
 - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
 - (2) The analytical method used; and
 - (3) The method detection level.
- 8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:
 - a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric tons per 365-day period generated at the facility.
 - b. If the applicant's facility receives biosolids or sewage sludge from another facility, the following information for each facility from which biosolids or sewage sludge is received:
 - (1) The name, mailing address, and location of the other facility;
 - (2) The total dry metric tons per 365-day period received from the other facility; and
 - (3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.
 - c. If the applicant's facility changes the quality of biosolids or sewage sludge through blending, treatment, or other activities, the following information:
 - (1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;
 - (2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and
 - (3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.
 - d. If biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B Table 1, the pollutant concentrations in 9VAC25-31-540 B Table 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the biosolids is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.
 - e. If biosolids from the applicant's facility is sold or given away in a bag or other container for application to the land, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information:
 - (1) The total dry metric tons per 365-day period of biosolids subject to this subsection that is sold or given away in a bag or other container for application to the land; and
 - (2) A copy of all labels or notices that accompany the biosolids being sold or given away.
 - f. If biosolids or sewage sludge from the applicant's facility is provided to another person who prepares biosolids, as defined in 9VAC25-31-500, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information for each facility receiving the biosolids or sewage sludge:

- (1) ~~The name and mailing address~~ name, mailing address and electronic mail address of the receiving facility;
 - (2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject to this subsection that the applicant provides to the receiving facility;
 - (3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;
 - (4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and
 - (5) If the receiving facility places biosolids in bags or containers for sale or give-away for application to the land, a copy of any labels or notices that accompany the biosolids.
9. If biosolids from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 8 d, e, or f of this subsection, the applicant must provide the following information:
- a. Written permission of landowners on the most current form approved by the board.
 - b. The total dry metric tons per 365-day period of biosolids subject to this subsection that is applied to the land.
 - c. If any land application sites are located in states other than the state where the biosolids is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.
 - d. The following information for each land application site that has been identified at the time of permit application:
 - (1) The DEQ control number, if previously assigned, identifying the land application field or site. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location;
 - (2) The site's latitude and longitude in decimal degrees to three decimal places and method of determination;
 - (3) A legible topographic map and aerial photograph, including legend, of proposed application areas to scale as needed to depict the following features:
 - (a) Property boundaries;
 - (b) Surface water courses;
 - (c) Water supply wells and springs;
 - (d) Roadways;
 - (e) Rock outcrops;
 - (f) Slopes;
 - (g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation);
 - (h) Occupied dwellings within 400 feet of the property boundaries and all existing extended dwelling and property line setback distances;
 - (i) Publicly accessible properties and occupied buildings within 400 feet of the property boundaries and the associated extended setback distances; and
 - (j) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in the permit, which may include multiple fields, to depict properties within 400 feet of the field boundaries;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, ~~and telephone number~~ telephone number, and electronic mail address of each site owner, if different from the applicant;

(8) The name, mailing address, ~~and telephone number~~ telephone number, and electronic mail address of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in biosolids;

(12) Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, and monthly storage (input and drawdown); and

(13) Other information that describes how the site will be managed, as specified by the board.

e. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-31-540 B Table 2 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-31-540 B Table 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the ~~name and phone number~~ name, phone number, and electronic mail address if available, of a contact person at the permitting authority; and

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 9 e (1) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 has been applied to the site since July 20, 1993.

10. Biosolids storage facilities not located at the site of the wastewater treatment plant. Plans and specifications for biosolids storage facilities not located at the site of the wastewater treatment plant generating the biosolids, including routine and on-site storage, shall be submitted for issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

- b. Location of any required soil, geologic, and hydrologic test holes or borings;
 - c. Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:
 - (1) Water wells (operating or abandoned);
 - (2) Surface waters;
 - (3) Springs;
 - (4) Public water supplies;
 - (5) Sinkholes;
 - (6) Underground and surface mines;
 - (7) Mine pool (or other) surface water discharge points;
 - (8) Mining spoil piles and mine dumps;
 - (9) Quarries;
 - (10) Sand and gravel pits;
 - (11) Gas and oil wells;
 - (12) Diversion ditches;
 - (13) Occupied dwellings, including industrial and commercial establishments;
 - (14) Landfills and dumps;
 - (15) Other unlined impoundments;
 - (16) Septic tanks and drainfields; and
 - (17) Injection wells;
 - d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:
 - (1) Maximum and minimum percent slopes;
 - (2) Depressions on the site that may collect water;
 - (3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and
 - (4) Portions of the site, if any, that are located within the 100-year floodplain;
 - e. Data and specifications for the liner proposed for seepage control;
 - f. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;
 - g. Calculations justifying impoundment capacity; and
 - h. Groundwater monitoring plans for the facilities if required by the department. The groundwater monitoring plan shall include pertinent geohydrological data to justify upgradient and downgradient well location and depth.
11. Staging. Generic plans are required for staging of biosolids.
12. A biosolids management plan shall be provided that includes the following minimum site specific information at the time of permit application:
- a. A comprehensive, general description of the operation shall be provided, including biosolids source or sources, quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation as required for application sites prior to board authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application is proposed more frequently than once every three years at greater than 50% of the annual agronomic rate;

(3) Mined or disturbed land sites where land application is proposed at greater than agronomic rates; or

(4) Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

13. Biosolids transport.

a. General description of transport vehicles to be used;

b. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning), field reclamation, and emergency spill notification and cleanup measures; and

c. Voucher system used for documentation and recordkeeping.

14. Field operations.

a. Storage.

(1) Routine storage at facilities not located at the site of the wastewater treatment plant – supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity;

(2) On-site storage – procedures for department/board approval and implementation;

(3) Staging – procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use; and

(4) Field reestablishment of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles;

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis; and

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; establishment of setback distances, slopes, prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

15. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, ~~and telephone number~~ telephone number and electronic mail address for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, ~~and mailing address~~ mailing address, and electronic mail address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

- (a) A description of any groundwater monitoring occurring at the active sewage sludge unit;
 - (b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;
 - (c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;
 - (d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and
 - (14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.
17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:
- a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.
 - b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:
 - (1) The name and/or number, contact person, mailing address, ~~and telephone number~~ telephone number, and electronic mail address of the sewage sludge incinerator; and
 - (2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.
18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:
- a. The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;
 - b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;
 - c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and
 - d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Solid Waste Management Regulations, 9VAC20-81.
19. All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to biosolids or sewage sludge generation, treatment, use, or disposal.
20. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the biosolids use and sewage sludge disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.
21. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.
- R. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.
2. Source water physical data. These include:
 - a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;
 - b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and
 - c. Location maps.
3. Cooling water intake structure data. These include:
 - a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;
 - b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;
 - c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;
 - d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and
 - e. Engineering drawings of the cooling water intake structure.
4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:
 - a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;
 - b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;
 - c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;
 - d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

- e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;
- f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;
- g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and
- h. If information requested in this subdivision 4 is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

9VAC25-31-110. Signatories to permit applications and reports.

A. All permit applications shall be signed as follows:

- 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- 2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- 3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- 1. The authorization is made in writing by a person described in subsection A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Electronic reporting. If documents described in subsection A or B of this section are submitted electronically by or on behalf of the VPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section and shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of this chapter and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D are met for that submission).

9VAC25-31-120. ~~Storm-water~~Stormwater discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of ~~storm-water~~stormwater shall not be required to obtain a VPDES permit except:

a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

b. A discharge associated with industrial activity; or

c. A discharge which either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying ~~storm-water~~stormwater run-off, except for those discharges from conveyances which do not require a permit under subdivision 2 of this subsection or agricultural ~~storm-water~~stormwater run-off which is exempted from the definition of point source.

2. The board may not require a permit for discharges of ~~storm-water~~stormwater run-off from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with or that has not come into contact with, any

overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. In addition to meeting the requirements of subsection B of this section, an operator of a ~~storm-water~~stormwater discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

4. For ~~storm-water~~stormwater discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of ~~storm-water~~stormwater associated with industrial activity through the nonmunicipal conveyance system.

a. All ~~storm-water~~stormwater discharges associated with industrial activity that discharge through a ~~storm-water~~stormwater discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the nonmunicipal conveyance a co-permittee to that permit.

b. Where there is more than one operator of a single system of such conveyances, all operators of ~~storm-water~~stormwater discharges associated with industrial activity must submit applications.

c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

5. Conveyances that discharge ~~storm-water~~stormwater run-off combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9VAC25-31-100 and are not subject to the provisions of this section.

6. Whether a discharge from a municipal separate storm sewer is or is not subject to VPDES regulation shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

7. a. On and after October 1, 1994, for discharges composed entirely of ~~storm-water~~stormwater, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VPDES permit only if:

(1) The board or the EPA regional administrator determines that ~~storm-water~~stormwater controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(2) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall seek coverage under a VPDES permit in accordance with subdivision B 1 of this section.

c. Operators of ~~storm-water~~stormwater discharges designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall apply to the board for a permit

within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for ~~storm-water~~stormwater discharges associated with industrial activity.

1. Dischargers of ~~storm-water~~stormwater associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated ~~storm-water~~stormwater general permit. Facilities that are required to obtain an individual permit, or any discharge of ~~storm-water~~stormwater which the board is evaluating for designation under subdivision A 1 c of this section, shall submit a VPDES application in accordance with the requirements of 9VAC25-31-100 as modified and supplemented by the provisions of this subsection.

a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a ~~storm-water~~stormwater discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall or outfalls covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each ~~storm-water~~stormwater outfall; paved areas and buildings within the drainage area of each ~~storm-water~~stormwater outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in ~~storm-water~~stormwater run-off, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive ~~storm-water~~stormwater discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to ~~storm-water~~stormwater; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with ~~storm-water~~stormwater runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in ~~storm-water~~stormwater runoff; and a description of the treatment the ~~storm-water~~stormwater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain ~~storm-water~~stormwater discharges associated with industrial activity have been tested or evaluated for the presence of ~~nonstorm-water~~nonstormwater discharges which are not covered by a VPDES permit; tests for such ~~nonstorm-water~~nonstormwater discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the

date of any testing, and the onsite drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9VAC25-31-100 of this part from all outfalls containing a ~~storm-water~~stormwater discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

(c) Oil and grease, pH, BOD₅, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 9VAC25-31-100 G 7 f and g;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event or events sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled run-off and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(6) Operators of a discharge which is composed entirely of ~~storm-water~~stormwater are exempt from the requirements of 9VAC25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and G 7 h; and

(7) Operators of new sources or new discharges which are composed in part or entirely of ~~storm-water~~stormwater must include estimates for the pollutants or parameters listed in subdivision 1 a (5) of this subsection instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of ~~storm-water~~stormwater must provide quantitative data for the parameters listed in subdivision 1 a (5) of this subsection within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of ~~storm-water~~stormwater are exempt from the requirements of 9VAC25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new discharge composed entirely of ~~storm-water~~stormwater from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subdivision 1 a of this subsection, unless the facility:

(1) Has had a discharge of ~~storm-water~~stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987;

(2) Has had a discharge of ~~storm-water~~stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

c. The operator of an existing or new discharge composed entirely of ~~storm-water~~stormwater from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

d. Applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

2. No application for a VPDES permit authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as such by city ordinance prior to January 1, 2006, shall be considered complete unless it contains certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district. This requirement shall apply to applications for new or modified individual VPDES permits and for new or modified coverage under general VPDES permits. This requirement does not apply to any municipal solid waste landfill in operation on or before January 1, 2006.

C. Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its ~~storm-water~~stormwater outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in subdivision 1 b of this subsection, for any ~~storm-water~~stormwater discharge associated with industrial activity as defined in this chapter which is not authorized by a ~~storm-water~~stormwater general permit, a permit application made pursuant to subsection B of this section shall be submitted to the department by October 1, 1992;

b. For any ~~storm-water~~stormwater discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the department by March 10, 2003;

2. A permit application shall be submitted to the department within 180 days of notice, unless permission for a later date is granted by the board, for:

a. A ~~storm-water~~stormwater discharge which either the board or the regional administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or

b. A ~~storm-water~~stormwater discharge subject to subdivision B 1 d of this section;

3. Facilities with existing VPDES permits for ~~storm-water~~stormwater discharges associated with industrial activity shall maintain existing permits. Facilities with permits for ~~storm-water~~stormwater discharges associated with industrial activity which expire on or after May 18, 1992, shall submit a new application in accordance with the requirements of 9VAC25-31-100 and 9VAC25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

D. Petitions.

1. Any person may petition the board to require a VPDES permit for a discharge which is composed entirely of ~~storm-water~~stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

2. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition.

E. Conditional exclusion for no exposure of industrial activities and materials to ~~storm-water~~stormwater. Discharges composed entirely of ~~storm-water~~stormwater are not ~~storm-water~~stormwater discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this subsection. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

- a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and run-off;
- b. Complete and sign (according to 9VAC25-31-110) a certification that there are no discharges of ~~storm-water~~stormwater contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subdivision 2 of this subsection;
- c. Submit the signed certification to the department once every five years. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in compliance with this section shall be submitted electronically by the owner or operator to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, owners or operators may be required to report electronically if specified by a particular permit;
- d. Allow the department to inspect the facility to determine compliance with the no exposure conditions;
- e. Allow the department to make any no exposure inspection reports available to the public upon request; and
- f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

- a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or otherwise secured and without operational taps or valves);
- b. Adequately maintained vehicles used in material handling; and
- c. Final products, other than products that would be mobilized in ~~storm-water~~stormwater discharge (e.g., rock salt).

3. a. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of ~~storm-water~~stormwater that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

- b. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.
- c. Notwithstanding the provisions of this subsection, the board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.
4. The no exposure certification requires the submission of the following information, at a minimum, to aid the board in determining if the facility qualifies for the no exposure exclusion:
- a. The legal name, address and phone number of the discharger.
 - b. The facility name and address, the county name and the latitude and longitude where the facility is located.
 - c. Certification that indicates that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:
 - (1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to ~~storm water~~stormwater;
 - (2) Materials or residuals on the ground or in ~~storm water~~stormwater inlets from spills/leaks;
 - (3) Materials or products from past industrial activity;
 - (4) Material handling equipment (except adequately maintained vehicles);
 - (5) Materials or products during loading/unloading or transporting activities;
 - (6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to ~~storm water~~stormwater does not result in the discharge of pollutants);
 - (7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;
 - (8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;
 - (9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);
 - (10) Application or disposal of process wastewater (unless otherwise permitted); and
 - (11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the ~~storm water~~stormwater outflow.
 - d. All no exposure certifications must include the following certification statement and be signed in accordance with the signatory requirements of 9VAC25-31-110: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES ~~storm water~~stormwater permitting; and that there are no discharges of ~~storm water~~stormwater contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under 9VAC25-

31-120 E 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of ~~storm water~~ stormwater associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9VAC25-31-130. Concentrated animal feeding operations.

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

- a. The size of the animal feeding operation and the amount of wastes reaching surface waters;
- b. The location of the animal feeding operation relative to surface waters;
- c. The means of conveyance of animal wastes and process wastewaters into surface waters;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and
- e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

- a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. VPDES permit authorization.

1. Permit requirement. The owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit. In order to obtain authorization under a VPDES permit, the CAFO owner or operator shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. The owners or operators of a CAFO must have obtained authorization under the VPDES permit at the time that the CAFO discharges.

2. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9VAC25-31-100 J. A notice of intent for a general permit must include the information specified in 9VAC25-31-100 J and 9VAC25-31-170.

3. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural ~~storm-water~~stormwater discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural ~~storm-water~~stormwater discharge.

a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200.

b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such documentation readily available to department staff upon request.

4. Procedures for CAFOs seeking coverage under a general permit. CAFO owners or operators shall submit a registration statement when seeking authorization to discharge under a general permit in accordance with subsection B of 9VAC25-31-170. The board will review registration statements submitted by CAFO owners or operators to ensure that the registration statement includes the information required by subsection J of 9VAC25-31-100, including a nutrient management plan that meets the requirements of subsection E of 9VAC25-31-200 and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. When additional information is necessary

to complete the registration statement or clarify, modify, or supplement previously submitted material, the board may request such information from the owner or operator. If the board makes a preliminary determination that the registration statement meets the requirements of subsection J of 9VAC25-31-100 and subsection E of 9VAC25-31-200, the board will notify the public of the board's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the registration statement submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and public hearing requests, and the public hearing process if a request for a public hearing is granted, shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13. The board may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a public hearing that differs from the time period specified in 9VAC25-31-290. The board's response to significant comments received during the comment period is governed by 9VAC25-31-320, and, if necessary, the board will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the board authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The board will notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

5. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the board:

a. The CAFO owner or operator shall provide the board with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not subject to the requirements of this subdivision 5.

b. The board will review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412, and will determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the board will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the board will determine whether such changes are substantial changes as described in subdivision 5 c of this subsection.

(1) If the board determines that the changes to the terms of the nutrient management plan are not substantial, the board will make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the board determines that the changes to the terms of the nutrient management plan are substantial, the board will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public

review and comment. The process for public comments, public hearing requests, and the public hearing process if a public hearing is held shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13. The board may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a public hearing on the proposed changes that differs from the time period specified in 9VAC25-31-290. The board will respond to all significant comments received during the comment period as provided in 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the board incorporates the revised terms of the nutrient management plan into the permit, the board will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing VPDES permit in accordance with the requirements of subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application, as set forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in subdivision E 5 b of 9VAC25-31-200;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with subdivision E 5 of 9VAC25-31-200; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state waters.

6. Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C 4 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the requirements of 9VAC25-31-370.

9VAC25-31-140. Concentrated aquatic animal production facilities.

A. Concentrated aquatic animal production facilities, as defined in this chapter, are point sources subject to the VPDES permit program.

B. Case-by-case designations. The board may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The location and quality of the receiving surface waters;

- b. The holding, feeding, and production capacities of the facility;
 - c. The quantity and nature of the pollutants reaching surface waters; and
 - d. Other relevant factors.
2. A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the department has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the VPDES permit program.

9VAC25-31-150. Aquaculture projects.

Discharges into aquaculture projects, as defined in this chapter, are subject to the VPDES permit program. Permits for aquaculture projects shall be issued according to the criteria of 40 CFR Part 125, Subpart B.

9VAC25-31-160. Silvicultural activities.

Silvicultural point sources, as defined in this chapter, are point sources subject to the VPDES permit program.

9VAC25-31-165. Requirements applicable to cooling water intake structures.

A. Definitions. The following definitions apply specifically to this section:

"Annual mean flow" means the average of daily flows over a calendar year.

"Closed-cycle recirculating system" means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes.

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Design intake flow" means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

"Design intake velocity" means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

"Entrainment" means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

"Estuary" means a semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land

drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

"Existing facility" means any facility that is not a new facility.

"Freshwater river or stream" means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this section, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.

"Hydraulic zone of influence" means that portion of the source water body hydraulically affected by the cooling water intake structure withdrawal of water.

"Impingement" means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

"Lake or reservoir" means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.

"Maximize" means to increase to the greatest amount, extent, or degree reasonably possible.

"Minimize" means to reduce to the smallest amount, extent, or degree reasonably possible.

"Natural thermal stratification" means the naturally-occurring division of a water body into horizontal layers of differing densities as a result of variations in temperature at different depths.

"New facility" means any building, structure, facility, or installation that meets the definition of a "new source" or "new discharger" and is a greenfield or stand-alone facility that commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

"Ocean" means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

"Source water" means the water body from which the cooling water is withdrawn.

"Thermocline" means the middle layer of a thermally stratified lake or reservoir. In this layer, there is a rapid decrease in temperatures.

"Tidal excursion" means the horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

"Tidal river" means the most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

B. Cooling water intake structures for new facilities.

1. Applicability.

- a. This section applies to a new facility if it:

(1) Is a point source that uses or proposes to use a cooling water intake structure;
(2) Has at least one cooling water intake structure that uses at least 25% of the water it withdraws for cooling purposes as specified in subdivision 1 c of this subsection; and

(3) Has a design intake flow greater than two million gallons per day (MGD).

b. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to state waters. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

c. The threshold requirement that at least 25% of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25% cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25% of the total water withdrawn.

d. This section does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

2. Compliance.

a. The owner or operator of a new facility must comply with either Track I in subdivision 2 b or c of this subsection or Track II in subdivision 2 d of this subsection. In addition to meeting the requirements in subdivision 2 b, c or d of this subsection, the owner or operator of a new facility may be required to comply with subdivision 2 e of this subsection.

b. Track I requirements for new facilities that withdraw equal to or greater than 10 MGD. Facilities must comply with all of the following requirements:

(1) Reduce intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(2) Design and construct each cooling water intake structure to a maximum through-screen design intake velocity of 0.5 ft/s;

(3) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the

intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the board, and the board determines that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would contribute unacceptable stress to these species of concern;

(6) Submit the application information required in 9VAC25-31-100 Q and subdivision 4 b of this subsection;

(7) Implement the monitoring requirements specified in subdivision 5 of this subsection;

(8) Implement the record-keeping requirements specified in subdivision 6 of this subsection.

c. Track I requirements for new facilities that withdraw equal to or greater than two MGD and less than 10 MGD and that choose not to comply with subdivision 2 b of this subsection. Facilities must comply with all of the following requirements:

(1) Design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is

determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivisions 2 c (1) and (2) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(4) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(5) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-165 B 4;

(6) Implement the monitoring requirements specified in 9VAC25-31-165 B 5;

(7) Implement the recordkeeping requirements specified in 9VAC25-31-165 B 6.

d. Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

(1) Demonstrate to the board that the technologies employed will reduce the level of adverse environmental impact from cooling water intake structures to a comparable level to that which would be achieved using the requirements of subdivision 3 b (1) and (2) of this subsection. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result implementing the requirements of subdivisions 3 b (1) and (2) of this subsection. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the board identifies as species of concern. In identifying such species the board may consider information provided by fishery management agencies with responsibility for fisheries potentially affected by the cooling water intake structure along with data and information from other sources.

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meet the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

(3) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-165 B 4 c.

(4) Implement the monitoring requirements specified in 9VAC25-31-165 B 5.

(5) Implement the record-keeping requirements specified in 9VAC25-31-165 B 6.

e. The owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the board deems are reasonably necessary to comply with any provision of state law, including compliance with state water quality standards (including designated uses, criteria, and antidegradation requirements).

3. Alternative requirements.

a. Any interested person may request that alternative requirements less stringent than those specified in 9VAC25-31-165 B 2 a through e be imposed in the permit. The board may establish alternative requirements less stringent than the requirements of 9VAC25-31-165 B 2 a through e only if:

(1) There is an applicable requirement under 9VAC25-31-165 B 2 a through e;

(2) The board determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and state law.

b. The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

4. Application information requirements.

a. The owner or operator of a new facility must submit to the department:

(1) A statement of intention to comply with either:

(a) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in 9VAC25-31-165 B 2 b;

(b) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in 9VAC25-31-165 B 2 c or;

(c) The requirements for Track II in 9VAC25-31-165 B 2 d.

(2) The owner or operator must also submit the application information required by 9VAC25-31-100 Q and the information required in either subdivision 4 b of this subsection for Track I or subdivision 4 c of this section for Track II when application is made for a new or reissued VPDES permit.

b. Track I application requirements. To demonstrate compliance with Track I requirements in 9VAC25-31-165 B 2 b or c, collect and submit to the department the information in subdivision 4 b (1) through (4) of this subsection.

(1) Flow reduction information. To comply with the flow reduction requirements in 9VAC25-31-165 B 2 b (1), submit the following information to demonstrate reduction of flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(a) A narrative description of the system that has been designed to reduce intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that make-up and blowdown flows have been minimized; and

(b) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

(2) Velocity information. Submit the following information to demonstrate compliance with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure:

(a) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(b) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(3) Source water body flow information. Submit the following information to demonstrate that the cooling water intake structure meets the flow requirements in 9VAC25-31-165 B 2 b (3) and c (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting

documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(4) Design and Construction Technology Plan. To comply with 9VAC25-31-165 B 2 b (4) and (5), or 9VAC25-31-165 B 2 c (3) and (4), submit the following information in a Design and Construction Technology Plan:

(a) Information to demonstrate whether or not the criteria in 9VAC25-31-165 B 2 b (4) and b (5), or 9VAC25-31-165 B 2 c (3) and c (4) are met;

(b) Delineation of the hydraulic zone of influence for the cooling water intake structure;

(c) New facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures selected based on information collected for the Source Water Biological Baseline Characterization required by 9VAC25-31-100 Q. (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

(i) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that will be used to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(ii) A narrative description of the design and operation of the design and construction technologies that will be used to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(iii) Design calculations, drawings, and estimates to support the descriptions provided in 9VAC25-31-165 B 4 b (4) (c) (i) and (ii).

c. Application requirements for Track II. In order to with the requirements of Track II in 9VAC25-31-165 B 2 d collect and submit the following information:

(1) Source water body flow information. Submit to the department the following information to demonstrate that the cooling water intake structure meets the source water body requirements in 9VAC25-31-165 B 2 d (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting

documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(2) Track II Comprehensive Demonstration Study. Perform and submit the results of a Comprehensive Demonstration Study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at the cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those achieved by implementation of the requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. To demonstrate the "comparable level" requirement, include information showing that:

(a) Both impingement mortality and entrainment of all life stages of fish and shellfish are reduced by 90% or greater of the reduction that would be achieved through 9VAC25-31-165 B 2 b (1) and (2); or

(b) If the demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2); and

(c) Develop and submit a plan to the department containing a proposal for how information will be collected to support the study. The plan must include:

(i) A description of the proposed and/or implemented technology(ies) to be evaluated in the study;

(ii) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If existing source water body data is used, it must be no more than five years old, demonstrated sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and include documentation that the data were collected using appropriate quality assurance/quality control procedures;

(iii) Any public participation or consultation with federal or state agencies undertaken in developing the plan; and

(iv) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods proposed must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods; and

(d) Submit documentation of the results of the study to the director. Documentation of the results of the study must include:

(i) Source Water Biological Study. The Source Water Biological Study must include a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure; an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

(ii) Evaluation of potential cooling water intake structure effects. This evaluation will include calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies selected to implement requirements under Track II and an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish, demonstrating that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved implementing the requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(iii) Evaluation of proposed restoration measures. If restoration measures are proposed to maintain the fish and shellfish provide information and data to show coordination with the appropriate fishery management agency(ies) and a plan that provides a list of the measures to implement to demonstrate and continue to ensure that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level to that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2).

(iv) Verification monitoring plan. Include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in 9VAC25-31-165 B 4 c (2) (d) (ii). The plan must describe the frequency of monitoring and the parameters to be monitored. The department will use the verification monitoring to confirm that the level of impingement mortality and entrainment reduction required in is met and that the operation of the technology has been optimized. Include a plan to conduct monitoring to verify that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level as that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2).

5. Monitoring. The owner or operator of a new facility will be required to perform monitoring to demonstrate compliance with the requirements specified in 9VAC25-31-165 B 2.

a. Biological monitoring. Monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data or the Comprehensive Demonstration Study, depending on whether compliance with Track I or Track II was chosen. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Follow the monitoring frequencies identified below for at least two years after the initial permit issuance.

(1) Impingement sampling. Collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(2) Entrainment sampling. Collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Collect samples only when the cooling water intake structure is in operation.

b. Velocity monitoring. If the facility uses surface intake screen systems, monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in 9VAC25-31-165 B 2 b (2) or c (1). If the facility uses devices other than surface intake screens, monitor velocity at the point of entry through the device. Monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in the VPDES permit.

c. Visual or remote inspections. Conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Conduct visual inspections at least weekly to ensure that any design and construction technologies are maintained and operated to ensure that they will continue to function as designed. Alternatively, inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

6. Records and reporting. The owner or operator of a new facility is required to keep records and report information and data to the department as follows:

a. Keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under 9VAC25-31-165 B 4, and any compliance monitoring data submitted under 9VAC25-31-165 B 5, for a period of at least three years from the date of permit issuance. The department may require that these records be kept for a longer period.

b. Provide the following to the department in a yearly status report:

(1) Biological monitoring records for each cooling water intake structure as required by 9VAC25-31-165 B 5 a;

(2) Velocity and head loss monitoring records for each cooling water intake structure as required by 9VAC25-31-165 B 5 b; and

(3) Records of visual or remote inspections as required in 9VAC25-31-165 B 5 c.

C. Cooling water intake structures for existing facilities.

Existing facilities that are not subject to requirements under this section must meet requirements under section 316(b) of the Clean Water Act determined by the department on a case-by-case, best professional judgment (BPJ) basis.

9VAC25-31-170. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

- a. Designated planning areas under §§ 208 and 303 of CWA;
- b. Sewer districts or sewer authorities;
- c. City, county, or state political boundaries;
- d. State highway systems;
- e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
- g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

- a. ~~Storm water~~stormwater point sources; or
- b. One or more categories or subcategories of point sources other than ~~storm water~~stormwater point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:
 - (1) Involve the same or substantially similar types of operations;
 - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
 - (4) Require the same or similar monitoring; and
 - (5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subsection shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, dischargers (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams and other required data elements as identified in Appendix A to 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030. General permits for ~~storm-water~~stormwater discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9VAC25-31-100 J 1, including a topographic map. All notices of intent shall be signed in accordance with 9VAC25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be

covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and ~~storm-water~~stormwater discharges associated with industrial activity, may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in subdivision C 4 of 9VAC25-31-130.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

- (b) The size of the discharge;
- (c) The quantity and nature of the pollutants discharged to surface waters; and
- (d) Other relevant factors.

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, ~~storm-water~~stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a ~~storm-water~~stormwater discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the law and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-31-120 A 1 within 60 days of notice or under 9VAC25-31-120 A 7 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9VAC25-31-180. New sources and new dischargers.

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter, and

- a. It is constructed at a site at which no other source is located; or

- b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the board shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.
2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.
3. Construction on a site at which an existing source is located results in a permit modification subject to 9VAC25-31-390 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.
4. Construction of a new source has commenced if the owner or operator has:
- a. Begun, or caused to begin as part of a continuous on-site construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:
- a. Ten years from the date that construction is completed;
 - b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or
 - c. The period of depreciation or amortization of the facility for the purposes of §§ 167 or 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).
2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

- a. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the law and § 307(a) of the CWA; or
 - b. Additional permit conditions controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.
3. When a VPDES permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the law immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.
4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 9VAC25-31-250 A 2.
5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

Part III Permit Conditions

9VAC25-31-190. Conditions applicable to all permits.

The following conditions apply to all VPDES permits. Additional conditions applicable to VPDES permits are in 9VAC25-31-200. All conditions applicable to VPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the CWA within the time provided in the chapters that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

C. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

I. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the law, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding

the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual or individuals who performed the sampling or measurements;
- c. The date or dates analyses were performed;
- d. The individual or individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods; or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this chapter, unless other test procedures have been specified in the permit.

5. Samples taken shall be analyzed by a laboratory certified under 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

K. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-31-110.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A;
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1; or
- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the CWA.

4. Monitoring results shall be reported at the intervals specified in the permit.

- a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department for reporting results of monitoring of sludge use or disposal practices. As of the start date in Table 1 of 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision 4 shall be submitted electronically by the permittee to the department in compliance with this

subdivision 4 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this chapter, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the department.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and
- d. Flooding or other acts of nature.

7. Twenty-four hour and five-day reporting.

a. The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report in a format required by the department shall also be provided within five days of the time the permittee becomes aware of the circumstances. The five-day report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(1) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in subdivision 7 a of this subsection with the exception of time of discovery, as well as the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass events); type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall); discharge volumes untreated by the treatment works treating

domestic sewage; types of human health and environmental impacts of the sewer overflow event; and whether the noncompliance was related to wet weather.

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision.

b. The following shall be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the five-day report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in a format required by the department at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

a. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in subdivision 7 a of this subsection and the applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

c. The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

10. The owner, operator, or the duly authorized representative of an VPDES-regulated entity is required to electronically submit the required information, as specified in

Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

M. Bypass.

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of

claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the cause or causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and
- d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- a. One hundred micrograms per liter (100 µg/l);
- b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- c. Five times the maximum concentration value reported for that pollutant in the permit application; or
- d. The level established by the board in accordance with 9VAC25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

- a. Five hundred micrograms per liter (500 µg/l);
- b. One milligram per liter (1 mg/l) for antimony;
- c. Ten times the maximum concentration value reported for that pollutant in the permit application; or
- d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to § 301 or 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the ~~regulations of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (18VAC160-20)~~ Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be

released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural ~~storm-water~~stormwater discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, ~~storm-water~~stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- c. Ensure that clean water is diverted, as appropriate, from the production area;
- d. Prevent direct contact of confined animals with surface waters of the state;
- e. Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
- f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;
- g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;
- h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and
- i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

- a. All applicable records identified pursuant to subdivision 1 i of this subsection;
- b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit. The annual report must include:

- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including for each discharge the date of discovery, duration of discharge, and approximate volume;
- g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and
- h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with subdivision 5 b (2) of this subsection);

the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-31-210. Establishing permit conditions.

A. In addition to conditions required in all permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable

requirements of the law, the CWA and regulations. These shall include conditions under 9VAC25-31-240 (duration of permits), 9VAC25-31-250 (schedules of compliance), 9VAC25-31-220 (monitoring), electronic reporting requirements of 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of this chapter.

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Part V of this chapter.

2. New or reissued permits, and to the extent allowed under Part V of this chapter modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in 9VAC25-31-220 and 9VAC25-31-230.

C. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

9VAC25-31-220. Establishing limitations, standards, and other permit conditions.

In addition to the conditions established under 9VAC25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under § 405(d) of the CWA and Part VI (9VAC25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC § 6901 et seq.), Part C of Safe Drinking Water Act (42 USC § 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1401 et seq.), or the Clean Air Act (42 USC § 4701 et seq.), or in another permit issued by the Department of Environmental Quality or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

3. Requirements applicable to cooling water intake structures at new facilities under § 316 (b) of the CWA, in accordance with 9VAC25-31-165.

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under § 405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other

information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and § 302 of the CWA;
3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and § 401 of the CWA;
4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;
5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with § 301(b)(1)(C) of the CWA;
6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under § 208(b) of the CWA;
7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges; or
8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D.

E. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or
2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:
 - a. Limitations on those pollutants; or
 - b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A.

F. A notification level which exceeds the notification level of 9VAC25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9VAC25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-31-190, subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of this chapter. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9VAC25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and § 405(d)(4) of the CWA; and

d. ~~According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;~~ According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N or O.

(1) For the purposes of this paragraph, a method is "sufficiently sensitive" when:

(a) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(b) The method has the lowest ML of the analytical methods approved under 40 CFR part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

(2) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI (9VAC25-31-420 et seq.) of this chapter (where applicable), but in no case less than once a year. All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter;

6. Requirements to report monitoring results for ~~storm-water~~stormwater discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for ~~storm-water~~stormwater discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on

the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

- a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a ~~storm-water~~stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a ~~storm-water~~stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
 - b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;
 - c. Such report and certification be signed in accordance with 9VAC25-31-110; and
 - d. Permits for ~~storm-water~~stormwater discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and
8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9VAC25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA and Part VII (9VAC25-31-730 et seq.) of this chapter;
2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent applicable under § 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;
3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and
4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;
2. Authorized under § 402(p) of the CWA for the control of ~~storm-water~~stormwater discharges;
3. Numeric effluent limitations are infeasible; or
4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations

established on the basis of §§ 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and §§ 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require

separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§ 201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limitations under § 301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-31-330.

9VAC25-31-230. Calculating VPDES permit conditions.

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9VAC25-31-220 and subsection H of this section (limitations on internal waste streams).

B. Production-based limitations.

1. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

2. a. Except in the case of POTWs or as provided in subdivision 2 b of this subsection, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

b. (1) (a) The board may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(b) For the automotive manufacturing industry only, the board may establish a condition under subdivision 2 b (1) (a) of this subsection if the applicant satisfactorily demonstrates to the board at the time the application is submitted that its actual production, as indicated in subdivision 2 a of this subsection, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(2) If the board establishes permit conditions under subdivision 2 b (1) of this subsection:

(a) The permit shall require the permittee to notify the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall

specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under subdivision 2 b (2) (a) of this subsection, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

C. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or
2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA and the law; or
3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

D. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
2. Average weekly and average monthly discharge limitations for POTWs.

E. Discharges which are not continuous, as defined in 9VAC25-31-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;
2. Total mass;
3. Maximum rate of discharge of pollutants during the discharge; and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

F. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

- a. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
- b. When applicable standards and limitations are expressed in terms of other units of measurement; or
- c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the

pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

G. Pollutants in intake water.

1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water to the extent necessary to meet the applicable technology-based limitation or standard, up to a maximum value equal to the influent value. Credit shall be granted only if:

- a. The applicable effluent limitations and standards contained in the regulations incorporated by reference in 9VAC25-31-30 specifically provide that they shall be applied on a net basis; or
- b. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meets the limitations and standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit for the level of pollutants in the intake water may be considered in setting water quality-based effluent limitations according to 9VAC25-31-220 D. Where a total maximum daily load has been established for the receiving waterbody and it is applicable to the discharge, it shall be considered when such effluent limitations are developed. The board may consider the presence of intake pollutants when determining either that water quality-based effluent limitations are not necessary under 9VAC25-31-220 D or that any water quality-based effluent limitations justified by 9VAC25-31-220 D will be established in a manner that does not hold the permittee responsible for removing pollutants originating in its intake water.

4. Additional monitoring may be necessary to determine eligibility for any credits and compliance with permit limits.

5. Credits shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The board may waive this requirement for technology-based effluent limitations, standards, and prohibitions if he finds that no environmental degradation will result.

- a. An intake pollutant is considered to be from the same body of water as the discharge if the board finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

- (2) There is direct hydrological connection between the intake and discharge points; and

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

Other site-specific factors relevant to the transport and fate of the pollutant may be considered in making this finding.

b. An intake pollutant from groundwater may be considered to be from the same body of water if the board determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions or treatment processes.

c. For pollutants in intake water provided by a water supply system, where the raw water supply is removed from the same body of water as the discharge, the concentration of the intake pollutant shall be determined at the point where the water enters the water supplier's distribution system.

d. Where a facility discharges intake pollutants that originate in part from the same body of water and in part from a different body of water, the effluent limitation may provide for intake credits for the portion of the pollutants derived from the same body of water, provided that adequate monitoring to determine compliance can be established and is included in the permit.

6. Credits shall not be granted if the discharger contributes to the level of the pollutant in the intake water prior to the intake.

7. Credits for intake pollutants do not apply to technology-based limitations on the discharge of raw water clarifier sludge generated from the treatment of intake water.

H. Internal waste streams.

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by 9VAC25-31-220 I shall also be applied to the internal waste streams.

2. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

I. Disposal of pollutants into wells, POTWs or by land application.

1. When part of a discharger's process wastewater is not being discharged into surface waters or into the contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters, applicable effluent standards and limitations for the discharge in a VPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

a. If none of the waste from a particular process is discharged into surface waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

b. In all cases other than those described in subdivision 1 a of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to surface waters, and T is the total wastewater flow.

2. Subdivision 1 of this subsection does not apply to the extent that promulgated effluent limitations guidelines:

- a. Control concentrations of pollutants discharged but not mass; or
- b. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

3. Subdivision 1 of this subsection does not alter a discharger's obligation to meet any more stringent requirements established in the permit.

9VAC25-31-240. Duration of permits.

A. VPDES permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 9VAC25-31-70, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The board may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2) (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

E. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under subsection D of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

9VAC25-31-250. Schedules of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the law, the CWA, and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

2. The first VPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when

necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in permits for existing sources which are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A VPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for VPDES sources) rather than continuing to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;

3. If the permittee is undecided whether to cease conducting regulated activities, the board may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection it shall

follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board, such as a resolution of the board of directors of a corporation.

Part IV
Public Involvement

9VAC25-31-260. Draft permits.

A. Once an application is complete, the board shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the board tentatively decides to deny the permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board shall provide public notice and opportunity for a public hearing prior to board action on the application.

C. If the board tentatively decides to issue a VPDES general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 9VAC25-31-190 and 9VAC25-31-210;
2. All compliance schedules under 9VAC25-31-250;
3. All monitoring requirements under 9VAC25-31-220; and
4. Effluent limitations, standards, prohibitions, standards for biosolids use or sewage sludge disposal, and conditions under 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-220, and Part VI (9VAC25-31-370 et seq.), and all variances that are to be included.

9VAC25-31-270. Statement of basis.

A statement of basis shall be prepared for every draft permit for which a fact sheet under 9VAC25-31-280 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

9VAC25-31-280. Fact sheet.

A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, for every draft permit that includes a biosolids land application under 9VAC25-31-100 D 2, and for every draft permit which the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The board shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;
2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft permit including:
 - a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;
 - b. Procedures for requesting a public hearing and the nature of that hearing; and
 - c. Any other procedures by which the public may participate in the final decision;
6. Name and telephone number of a person to contact for additional information;
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for biosolids use or sewage sludge disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for biosolids use or sewage sludge disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - a. Limitations to control toxic pollutants;
 - b. Limitations on internal waste streams;
 - c. Limitations on indicator pollutants;
 - d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis;
 - e. Limitations to meet the criteria for permit issuance under 9VAC25-31-50; or
 - f. Waivers from monitoring requirements granted under 9VAC25-31-220 A;
9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the board's decision on regulation of users;
10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and
11. Justification of waiver of any application requirements under 9VAC25-31-100 ~~J or P, K or Q.~~

9VAC25-31-290. Public notice of permit actions and public comment period.

A. Scope.

1. The department shall give public notice that the following actions have occurred:
 - a. A draft permit has been prepared under 9VAC25-31-260 D;
 - b. A public hearing has been scheduled under 9VAC25-31-310; or
 - c. A VPDES new source determination has been made under 9VAC25-31-180.
2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9VAC25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee.
3. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.
4. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.
2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his rights to receive notice for any classes and categories of permits):

- a. The applicant (except for VPDES general permits when there is no applicant);
- b. Any other agency which the department knows has issued or is required to issue a VPDES, biosolids management permit;
- c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
- d. Any state agency responsible for plan development under § 208(b)(2), § 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service;
- e. Any user identified in the permit application of a privately owned treatment works;
- f. Persons on a mailing list developed by:
 - (1) Including those who request in writing to be on the list;
 - (2) Soliciting persons for area lists from participants in past permit proceedings in that area; and
 - (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.);
- g. Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
- h. Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. Except for permits for concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with 9VAC25-31-130 B, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. However, if the applicant so chooses for industrial minor permit actions, an abbreviated public notice shall be published in such newspaper, listing the name of the permitted facility, the type of discharge, and a link to the department's website where the full public notice consistent with subsection D of this section is posted. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

- a. Name and address of the office processing the permit action for which notice is being given;
- b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;
- c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;
- d. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;
- e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;
- f. A general description of the location of each existing or proposed discharge point, the name of the receiving water, the biosolids use and sewage sludge disposal practice, the location of each sludge treatment works treating domestic sewage, and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;
- g. Requirements applicable to cooling water intake structures under § 316 of the CWA, in accordance with 9VAC25-31-165; and
- h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-31-310 shall contain the following information:

- a. Reference to the date of previous public notices relating to the permit;
- b. Date, time, and place of the public hearing;
- c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and
- d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

- a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9VAC25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under §§ 301 or 306 of the CWA;
- b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed, by electronic or postal delivery, a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the department shall:

1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated land application of biosolids, or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage does or is proposed to take place of, at a minimum:

- a. The name of the applicant;
- b. The nature of the application and proposed discharge;
- c. The availability and timing of any comment period; and
- d. Upon request, any other information known to, or in the possession of, the board or the department regarding the applicant not required to be held confidential by this chapter.

2. Except for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the board.

G. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized by the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

H. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the department shall make a good faith effort to notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

I. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

J. Before issuing any permit, if the board finds that there are localities particularly affected by the permit, the board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged.

2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

3. Accept written comments for at least 15 days after any public hearing on the permit, unless the board votes to shorten the period.

4. For the purposes of this section, consider the term "locality particularly affected" to mean any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

9VAC25-31-300. Public comments and requests for public hearings.

During the public comment period provided under 9VAC25-31-290, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall meet the requirements of § 62.1-44.15:02 B of the Code of Virginia. All comments shall be considered in making the final decision and shall be answered as provided in 9VAC25-31-320.

9VAC25-31-310. Public hearings.

A. 1. Procedures for public hearings and permits before the board are those set forth in § 62.1-44.15:02 of the Code of Virginia.

2. Public notice of the public hearing shall be given as specified in 9VAC25-31-290 of this chapter.

3. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period for the draft permit shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the public hearing.

C. A tape recording or written transcript of the hearing shall be made available to the public.

D. Proceedings at, and the decision from, the public hearing will be governed by § 62.1-44.15:02 of the Code of Virginia.

9VAC25-31-320. Response to comments.

A. At the time that a final permit is issued, the board shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

9VAC25-31-330. Conditions requested by the Corps of Engineers and other government agencies.

A. If during the comment period for an VPDES draft permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the board shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the VPDES permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the board may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of this regulation, the law and of the CWA.

C. In appropriate cases the board may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

9VAC25-31-340. Decision on variances.

A. The board may grant or deny requests for variances requested pursuant to 9VAC25-31-100 L 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H.

B. The board may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant submitted pursuant to 9VAC25-31-100 L 2; or
2. A variance based on water quality related effluent limitations submitted pursuant to 9VAC25-31-100 L 3 or 9VAC25-31-100 M 2.

C. If the EPA Office Director for Wastewater Management approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The board may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D; or
2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-31-100 L 2 or 9VAC25-31-100 M 1.

E. If the administrator approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

9VAC25-31-350. Appeals of variances.

When the board issues a permit on which EPA has made a variance decision, separate appeals of the VPDES permit and of the EPA variance decision are possible.

9VAC25-31-360. Computation of time.

A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

B. Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

C. If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

D. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, electronic or postal delivery, three days shall be added to the prescribed time.

Part V

Transfer, Modification, Revocation and Reissuance, and Termination of Permits

9VAC25-31-370. Modification, revocation and reissuance, or termination of permits.

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the board's initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9VAC25-31-390 or 9VAC25-31-410. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the board shall not modify, revoke and reissue or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part IV (9VAC25-31-260 et seq.) followed.

B. If the board decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the board tentatively decides to modify or revoke and reissue a permit, it shall prepare a draft permit incorporating the proposed changes. The board may request additional information and, in the case of a modified permit, may require the submission of an updated

application. In the case of revoked and reissued permits, the board shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 9VAC25-31-400 are not subject to the requirements of this section.

D. If the board tentatively decides to terminate a permit under 9VAC25-31-410, where the permittee objects, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit.

9VAC25-31-380. Transfer of permits.

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the law and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any VPDES permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; ~~and~~

3. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this ~~subsection.~~subsection; and

4. The new owner or operator has demonstrated compliance with 9VAC25-650-70, if applicable.

9VAC25-31-390. Modification or revocation and reissuance of permits.

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For VPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger VPDES permits

this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations incorporated by reference in 9VAC25-31-30; and

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of VPDES permits.

4. The board determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9VAC25-31-100 L or M within the time specified in this chapter.

6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit which are established under 9VAC25-31-220 B or C or 9VAC25-31-800 E.

8. a. Upon request of a permittee who qualifies for effluent limitations on a net basis under 9VAC25-31-230 G.

b. When a discharger is no longer eligible for net limitations as provided in 9VAC25-31-230 G 1 b.

9. As necessary under 9VAC25-31-800 E for a pretreatment program.

10. Upon failure to notify another state whose waters may be affected by a discharge.

11. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

12. To establish a notification level as provided in 9VAC25-31-220 F.

13. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under § 202(a)(3) of the CWA for 100% of the costs to modify or replace facilities constructed

with a grant for innovative and alternative wastewater technology under § 202(a)(2) of the CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

14. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

15. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the law and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9VAC25-31-410, and the board determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

9VAC25-31-400. Minor modifications of permits.

Upon the consent of the permittee, the board may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IV of this chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

A. Correct typographical errors;

B. Require more frequent monitoring or reporting by the permittee;

C. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

D. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;

E. 1. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

2. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

F. Incorporate conditions of an approved POTW pretreatment program (or a modification thereto that has been approved in accordance with the procedures in this chapter) as enforceable conditions of the POTW's permits.

G. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of subdivision C 5 of 9VAC25-31-130.

H. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of this chapter.

9VAC25-31-410. Termination of permits.

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;
2. Noncompliance by the permittee with any condition of the permit;
3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit, or in any other report or document required under the law or this chapter;
4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; or
6. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit necessary to protect human health or the environment.

B. The board shall follow the applicable procedures in this chapter in terminating any VPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the board shall follow the applicable procedures for termination under 9VAC25-31-370 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to the department. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit.

Part VI

Standards for the Use of Biosolids or Disposal of Sewage Sludge

Article 1

General Requirements

9VAC25-31-420. Purpose and applicability.

A. This part establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use of biosolids or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works. Standards are included in this part for biosolids applied to the land or sewage sludge placed on a surface disposal site. Also included in this part are pathogen and alternative vector attraction reduction requirements for biosolids applied to the land or sewage sludge placed on a surface disposal site.

B. In addition, the standards in this part include the frequency of monitoring and recordkeeping requirements when biosolids is applied to the land or sewage sludge is placed on a surface disposal site. Also included in this part are reporting requirements for Class I sludge management facilities, publicly owned treatment works (POTWs) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more.

C. Applicability.

1. This part applies to any person who prepares sewage sludge or biosolids, or applies biosolids to the land and to the owner/operator of a surface disposal site.
2. This part applies to biosolids applied to the land or sewage sludge placed on a surface disposal site.
3. This part applies to land where biosolids is applied and to a surface disposal site.

9VAC25-31-430. [Reserved]**9VAC25-31-440. Permits and direct enforceability.**

A. The requirements in this part may be implemented through a permit issued to a treatment works treating domestic sewage, in accordance with this chapter. Treatment works treating domestic sewage shall submit a permit application in accordance with this chapter.

B. No person shall use biosolids or dispose of sewage sludge through any practice for which requirements are established in this part except in accordance with such requirements.

C. No person shall land apply Class B biosolids on any land in Virginia unless that land has been identified in an application to issue, reissue, or modify a permit and approved by the board.

D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids source has been approved by the board.

9VAC25-31-450. Relationship to other regulations.

Disposal of sewage sludge in a municipal solid waste landfill unit that complies with the requirements in the Solid Waste Management Regulations (9VAC20-81) constitutes compliance with § 405(d) of the CWA. Any person who prepares sewage sludge that is disposed in a municipal solid waste landfill unit shall ensure that the sewage sludge meets the requirements in 9VAC20-81 concerning the quality of materials disposed in a municipal solid waste landfill unit.

9VAC25-31-460. Additional or more stringent requirements.

A. On a case-by-case basis, the board may impose requirements for the use of biosolids or disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids or sewage sludge.

B. Nothing in this part precludes the authority of another state agency, any political subdivision of Virginia, or an interstate agency with respect to the use of biosolids or disposal of sewage sludge.

C. For biosolids land application where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding setback distances, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

9VAC25-31-470. Exclusions.

A. Treatment processes. This part does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in 9VAC25-31-710 and 9VAC25-31-720.

B. Selection of a use or disposal practice. This part does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is a local determination.

C. Incineration of sewage sludge. This part does not establish requirements for sewage sludge fired in a sewage sludge incinerator or co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

D. Sludge generated at an industrial facility. This part does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

E. Hazardous sewage sludge. This part does not establish requirements for the use or disposal of sewage sludge determined to be hazardous in accordance with 40 CFR Part 261 or the Code of Virginia.

F. Sewage sludge with high PCB concentration. This part does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

G. Incinerator ash. This part does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

H. Grit and screenings. This part does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

I. Drinking water treatment sludge. This part does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or ground water used for drinking water.

J. Commercial and industrial septage. This part does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

9VAC25-31-480. Requirements for a person who prepares biosolids or sewage sludge.

A. Any person who prepares biosolids shall ensure that the applicable requirements in this part are met when biosolids is applied to the land.

B. Any person who prepares sewage sludge shall ensure that the applicable requirements in this part are met when the sewage sludge is placed on a surface disposal site.

9VAC25-31-485. Requirements for a person who land applies biosolids.

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this regulation unless an individual holding a valid certificate of competence as specified in the Virginia Pollution Abatement Permit Regulation, Article 5, Certification of Land Applicators, as set forth in 9VAC25-32-690 through 9VAC25-32-760, is onsite at all times during such land application.

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department:

1. Permit holders shall use a DEQ control number, if previously assigned, identifying each land application field. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to the application of biosolids on his property. The landowner agreement shall include:

- a. A statement certifying that the landowner is the sole owner or one of multiple owners of the property or properties identified on the landowner agreements;
- b. A statement certifying that no concurrent agreements are in effect for the fields to be permitted for biosolids application;
- c. An acknowledgement that the landowner shall notify the permittee when land is sold or ownership transferred;
- d. An acknowledgement that the landowner shall notify the permittee if any conditions change such that any component of the landowner agreement becomes invalid;
- e. Permission to allow department staff on the landowner's property to conduct inspections;
- f. An acknowledgement by the landowner of any site restrictions identified in the regulation;
- g. An acknowledgement that the landowner has received a biosolids fact sheet approved by the department; and
- h. An acknowledgement that the landowner shall not remove notification signs placed by the permit holder.

3. New landowner agreements, using the most current form provided by the board, shall be submitted to the department for proposed land application sites identified in each application for issuance or reissuance of a permit or the modification to add land to an existing permit that authorizes the land application of biosolids.

4. For permits modified in order to incorporate changes to this chapter, the permit holder shall, within 60 days of the effective date of the permit modification, advise the landowner by certified letter of the requirement to provide a new landowner agreement. The letter shall include instructions to the landowner for signing and returning the new landowner agreement and shall advise the landowner that the permit holder's receipt of such new landowner agreement is required prior to application of biosolids to the landowner's property.

5. The responsibility for obtaining and maintaining the agreements lies with the permit holder.

C. The permit holder shall ensure that the landowner agreement is still valid at the time of land application.

D. Notification requirements.

1. At least 100 days prior to commencing the first land application of biosolids at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site. This requirement may be satisfied by the department's notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

3. Not more than 24 hours prior to commencing land application activities, including delivery of biosolids at a permitted site, the permittee shall notify in writing the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. This notification shall include identification of the biosolids source and shall include only sites where land application activities will commence within 24 hours or where the biosolids will be staged within 24 hours.

E. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

F. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications in this subsection. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site.

a. A sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site used by the biosolids transport vehicles.

b. If the field is located adjacent to a public right-of-way, at least one sign shall be posted along each public road frontage beside the field to be land applied.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or where requirements conflict with local government ordinances and other requirements regulating the use of signs.

2. Upon the posting of signs at a land application site prior to commencing land application, the permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. Notification

shall be delivered to the department within 24 hours of the posting of the signs. The notice shall include the following:

- a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;
 - b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;
 - c. The name or title and telephone number of at least one individual designated by the permit holder to respond to questions and complaints related to the land application project if not the permit holder identified in subdivision a of this subdivision; and
 - d. The approximate dates on which land application is to begin and end at the site.
3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:
- a. A statement that biosolids are being land applied at the site;
 - b. The name of the permit holder;
 - c. The telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and
 - d. Contact information for the department, including a telephone number for complaints and inquiries.
4. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

G. Biosolids management plan.

1. The permit holder shall maintain and implement a biosolids management plan, which shall consist of three components:
 - a. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a site to the permit in accordance with 9VAC25-31-100 Q;
 - b. Nutrient management plan for each site, in accordance with 9VAC25-31-505; and
 - c. Operation and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.
2. The biosolids management plan and all of its components shall be incorporated as an enforceable part of the permit.
3. The O&M manual shall include at a minimum:
 - a. Equipment maintenance and calibration procedures and schedules;
 - b. Storage facility maintenance procedures and schedules;
 - c. Sampling schedules for:
 - (1) Required monitoring; and
 - (2) Operational control testing;
 - d. Sample collection, preservation and analysis procedures, including laboratories and methods used; and
 - e. Instructions for recording and reporting all monitoring activities.

4. Current VPDES permit holders who land apply biosolids may use their existing VPDES O&M plan addressing land application to satisfy the requirements of this section if the existing plan addresses all of the required minimum components identified in this section.

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of the complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

9VAC25-31-490. Sampling and analysis.

A. Representative samples of biosolids that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

B. Methods in the materials listed below or in 40 CFR Part 136 shall be used to analyze samples of biosolids and calculation procedures in the materials shall be used to calculate the percent volatile solids reduction for biosolids.

1. Enteric viruses.

ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology, ASTM, Philadelphia, PA., 1992.

2. Fecal coliform.

Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

3. Helminth ova.

Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

4. Inorganic pollutants.

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA and IVB. PB88-239223, National Technical Information Service, Springfield, Virginia.

5. Salmonella sp. bacteria.

Part 9260 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; or

Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

6. Specific oxygen uptake rate.

Part 2710 B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

7. Total, fixed, and volatile solids.

Part 2540 G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

8. Percent volatile solids reduction calculation.

"Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, Revised July 2003.

9VAC25-31-500. Definitions.

In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the following definitions apply to Part VI (9VAC25-31-420 et seq.) of this chapter. Where the same term is defined in both parts, the definition of Part VI of this chapter applies to the use of the term in Part VI of this chapter.

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate " or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Aquifer" means a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

"Base flood" means a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Class I sludge management facility" means any publicly owned treatment works (POTW) required to have an approved pretreatment program under this chapter and any treatment works treating domestic sewage classified as a Class I sludge management facility by the board because of the potential for its biosolids use or sewage sludge disposal practice to affect public health and the environment adversely.

"Contaminate an aquifer" means to introduce a substance that causes the maximum contaminant level for nitrate in the Virginia Water Quality Standards or in 40 CFR 141.62(b) to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater

5874 "Public contact site" means land with a high potential for contact by the public. This includes,
5875 but is not limited to, public parks, ball fields, cemeteries, and golf courses.

5876 "Qualified groundwater scientist" means an individual with a baccalaureate or post-graduate
5877 degree in the natural sciences or engineering who has sufficient training and experience in
5878 groundwater hydrology and related fields, as may be demonstrated by state registration,
5879 professional certification, or completion of accredited university programs, to make sound
5880 professional judgments regarding groundwater monitoring, pollutant fate and transport, and
5881 corrective action.

5882 "Range land" means open land with indigenous vegetation.

5883 "Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This
5884 includes, but is not limited to, strip mines and construction sites.

5885 "Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land
5886 surface and runs off of the land surface.

5887 "Seismic impact zone" means an area that has a 10% or greater probability that the horizontal
5888 ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

5889 "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of
5890 domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic
5891 septage; scum or solids removed in primary, secondary, or advanced wastewater treatment
5892 processes; and a material derived from sewage sludge. Sewage sludge does not include ash
5893 generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings
5894 generated during preliminary treatment of domestic sewage in a treatment works.

5895 "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal.
5896 This does not include land on which sewage sludge is either stored or treated. Land does not
5897 include surface waters.

5898 "Sewage sludge unit boundary" means the outermost perimeter of an active sewage sludge
5899 unit.

5900 "Site" means the area of land within a defined boundary where an activity is proposed or
5901 permitted.

5902 "Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per
5903 unit mass of total solids (dry weight basis) in the sewage sludge.

5904 "Store or storage of sewage sludge" means the placement of sewage sludge on land on which
5905 the sewage sludge remains for two years or less. This does not include the placement of sewage
5906 sludge on land for treatment.

5907 "Surface disposal site" means an area of land that contains one or more active sewage sludge
5908 units.

5909 "Total solids" means the materials in sewage sludge that remain as residue when the sewage
5910 sludge is dried at 103°C to 105°C.

5911 "Treat or treatment of sewage sludge" means the preparation of sewage sludge for final use
5912 or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage
5913 sludge. This does not include storage of sewage sludge.

5914 "Treatment works" means either a federally owned, publicly owned, or privately owned device
5915 or system used to treat (including recycle and reclaim) either domestic sewage or a combination
5916 of domestic sewage and industrial waste of a liquid nature.

5917 "Unstable area" means land subject to natural or human-induced forces that may damage the
5918 structural components of an active sewage sludge unit. This includes, but is not limited to, land
5919 on which the soils are subject to mass movement.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

Article 2 Biosolids Applied to the Land

9VAC25-31-505. Universal requirements for land application operations.

A. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Department of Conservation and Recreation shall be developed for all application sites prior to biosolids land application.

1. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to board authorization under specific conditions, including but not limited to:

a. Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

b. Sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed;

c. Mined or disturbed land sites where land application is proposed at greater than agronomic rates; and

d. Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

e. Where conditions at the land application site change so that it meets one or more of the specific conditions identified in this section, an approved nutrient management plan shall be submitted prior to any future land application at the site.

2. The nutrient management plan shall be available for review by the department at the land application site during biosolids land application.

3. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the nutrient management plan to the farm operator of the site, the Department of Conservation and Recreation, and the chief executive officer or designee for the local government unless they request in writing not to receive the nutrient management plan.

4. The nutrient management plan must be approved by the Department of Conservation and Recreation prior to land application for land application sites where the soil test phosphorus levels exceed the values in Table 1 of this section. For purposes of approval, permittees should submit the nutrient management plan to the Department of Conservation and Recreation at least 30 days prior to the anticipated date of land application to ensure adequate time for the approval process.

TABLE 1
SOIL PHOSPHORUS LEVELS REQUIRING NMP APPROVAL

Region	Soil Test P (ppm)
--------	-------------------

	VPI & SU Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
*If results are from another laboratory, the Department of Conservation and Recreation approved conversion factors must be used.	

B. Sewage sludge shall be treated to meet standards for land application of biosolids as required by Part VI (9VAC25-31-420 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of biosolids at a site approved for land application of biosolids under a VPDES permit. Any person who engages in the alteration of such biosolids shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to biosolids that have been treated to meet standards for land application as required by Part VI (9VAC25-31-420 et seq.) of this chapter, shall not constitute alteration of the composition of biosolids. The board may authorize public institutions of higher education to conduct scientific research on the composition of biosolids that may be applied to land.

C. Bulk biosolids meeting Class B pathogen reduction standards shall be land applied in accordance with the Virginia Pollution Abatement Permit Regulation, Article 3, Biosolids Use Standards and Practices, set forth in 9VAC25-32-490 through 9VAC25-32-580.

D. Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate malodors, when incorporation is practicable and compatible with a soil conservation plan or contract meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

E. For applications where surface applied biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended setback distances when necessary to protect odor sensitive receptors.

F. No person shall apply to the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing storage of sewage sludge or biosolids without first complying with all requirements adopted pursuant to § 62.1-44.19:3 R of the Code of Virginia.

9VAC25-31-510. Applicability; bulk biosolids; biosolids sold or given away in a bag or other container for application to the land.

A. This article applies to any person who prepares biosolids that is applied to the land, to any person who applies biosolids to the land, to biosolids applied to the land, and to the land on which biosolids is applied.

B. General requirements for bulk biosolids.

1. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 B through F do not apply when bulk biosolids is applied to the land if the bulk biosolids meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

2. The board may apply any or all of the general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 to the bulk biosolids in subdivision 1 of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any

6002 reasonably anticipated adverse effect that may occur from any pollutant in the bulk
6003 biosolids.

6004 C. General requirements for bulk material derived from biosolids.

6005 1. The general requirements in 9VAC25-31-530 and the management practices in
6006 9VAC25-31-550 B through F do not apply when a bulk material derived from biosolids is
6007 applied to the land if the derived bulk material meets the ceiling concentrations in 9VAC25-
6008 31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen
6009 requirements in 9VAC25-31-710 A, and one of the vector attraction reduction
6010 requirements in 9VAC25-31-720 B 1 through B 8.

6011 2. The board may apply any or all of the general requirements in 9VAC25-31-530 or the
6012 management practices in 9VAC25-31-550 to the bulk material in subdivision 1 of this
6013 subsection on a case-by-case basis after determining that the general requirements or
6014 management practices are needed to protect public health and the environment from any
6015 reasonably anticipated adverse effect that may occur from any pollutant in the bulk
6016 biosolids.

6017 D. The requirements in this article do not apply when a bulk material derived from biosolids is
6018 applied to the land if the biosolids from which the bulk material is derived meets the ceiling
6019 concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the
6020 Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction
6021 requirements in 9VAC25-31-720 B 1 through B 8.

6022 E. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-
6023 31-550 B through F do not apply when biosolids is sold or given away in a bag or other container
6024 for application to the land if the biosolids sold or given away in a bag or other container for
6025 application to the land meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant
6026 concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A,
6027 and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

6028 F. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-
6029 31-550 B through F do not apply when a material derived from biosolids is sold or given away in
6030 a bag or other container for application to the land if the derived material meets the ceiling
6031 concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the
6032 Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction
6033 requirements in 9VAC25-31-720 B 1 through B 8.

6034 G. The requirements in this article do not apply when a material derived from biosolids is sold
6035 or given away in a bag or other container for application to the land if the biosolids from which the
6036 material is derived meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant
6037 concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A,
6038 and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

6039 **9VAC25-31-520. [Reserved]**

6040 **9VAC25-31-530. General requirements.**

6041 A. No person shall apply biosolids to the land except in accordance with the requirements in
6042 this article.

6043 B. No person shall apply bulk biosolids subject to the cumulative pollutant loading rates in
6044 9VAC25-31-540 B 2 to agricultural land, forest, a public contact site, or a reclamation site if any
6045 of the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been reached.

6046 C. No person shall apply domestic septage to agricultural land, forest, or a reclamation site
6047 during a 365-day period if the annual application rate in 9VAC25-31-540 C has been reached
6048 during that period.

D. The person who prepares bulk biosolids that is applied to agricultural land, forest, a public contact site, or a reclamation site shall provide the person who applies the bulk biosolids written notification of the concentration of total nitrogen (as N on a dry weight basis) in the bulk biosolids.

E. Application of biosolids to the land.

1. The person who applies biosolids to the land shall obtain information needed to comply with the requirements in this subpart.

2. Before bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 is applied to the land;

a. The person who proposes to apply the bulk biosolids shall contact the department to determine whether bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

b. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has not been applied to the site since July 20, 1993, the cumulative amount for each pollutant listed in Table 2 of 9VAC25-31-540 may be applied to the site in accordance with 9VAC25-31-540 A 2 a.

c. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is known, the cumulative amount of each pollutant applied to the site shall be used to determine the additional amount of each pollutant that can be applied to the site in accordance with 9VAC25-31-540 A 2 a.

d. If bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993, and the cumulative amount of each pollutant applied to the site in the bulk biosolids since that date is not known, an additional amount of each pollutant shall not be applied to the site in accordance with 9VAC25-31-540 A 2 a.

F. When a person who prepares bulk biosolids provides the bulk biosolids to a person who applies the bulk biosolids to the land, the person who prepares the bulk biosolids shall provide the person who applies the biosolids notice and necessary information to comply with the requirements in this article.

G. When a person who prepares biosolids provides the biosolids to another person who prepares the biosolids, the person who provides the biosolids shall provide the person who receives the biosolids notice and necessary information to comply with the requirements in this article.

H. The person who applies bulk biosolids to the land shall provide the owner or lease holder of the land on which the bulk biosolids is applied notice and necessary information to comply with the requirements in this article.

I. Any person who prepares bulk biosolids in another state that is applied to land in Virginia shall provide written notice to the department prior to the initial application of bulk biosolids to the land application site by the applier. The notice shall include:

1. The location, by either street address or latitude and longitude, of each land application site;

2. The approximate time period bulk biosolids will be applied to the site;

3. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who prepares the bulk biosolids; and

6094 4. The name, address, telephone number, and National (or Virginia) Pollutant Discharge
6095 Elimination System permit number (if appropriate) for the person who will apply the bulk
6096 biosolids.

6097 J. Any person who applies bulk biosolids subject to the cumulative pollutant loading rates in
6098 9VAC25-31-540 B 2 to the land shall provide written notice, prior to the initial application of bulk
6099 biosolids to a land application site by the applier, to the department and the department shall
6100 retain and provide access to the notice. The notice shall include:

6101 1. The location, by either street address or latitude and longitude, of the land application
6102 site; and

6103 2. The name, address, telephone number, and Virginia Pollutant Discharge Elimination
6104 System permit number (if appropriate) of the person who will apply the bulk biosolids.

6105 **9VAC25-31-540. Pollutant limits.**

6106 A. Biosolids.

6107 1. Bulk biosolids or biosolids sold or given away in a bag or other container shall not be
6108 applied to the land if the concentration of any pollutant in the biosolids exceeds the ceiling
6109 concentration for the pollutant in Table 1 of this section.

6110 2. If bulk biosolids is applied to agricultural land, forest, a public contact site, or a
6111 reclamation site, either:

6112 a. The cumulative loading rate for each pollutant shall not exceed the cumulative
6113 pollutant loading rate for the pollutant in Table 2 of this section; or

6114 b. The concentration of each pollutant in the biosolids shall not exceed the
6115 concentration for the pollutant in Table 3 of this section.

6116 3. If bulk biosolids is applied to a lawn or a home garden, the concentration of each
6117 pollutant in the biosolids shall not exceed the concentration for the pollutant in Table 3 of
6118 this section.

6119 4. If biosolids is sold or given away in a bag or other container for application to the land,
6120 either:

6121 a. The concentration of each pollutant in the biosolids shall not exceed the
6122 concentration for the pollutant in Table 3 of this section; or

6123 b. The product of the concentration of each pollutant in the biosolids and the annual
6124 whole sludge application rate for the biosolids shall not cause the annual pollutant
6125 loading rate for the pollutant in Table 4 of this section to be exceeded. The procedure
6126 used to determine the annual whole sludge application rate is presented in subsection
6127 D of this section.

6128 B. Pollutant concentrations and loading rates - biosolids.

TABLE 1
CEILING CONCENTRATIONS

Pollutant	Ceiling Concentration (milligrams per kilogram)*
Arsenic	75
Cadmium	85
Copper	4,300
Lead	840

Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7,500
*Dry weight basis	

6129

TABLE 2
CUMULATIVE POLLUTANT LOADING RATES⁽¹⁾

Pollutant	Cumulative Pollutant Loading Rate	
	(kilograms per hectare)	(pounds per acre)
Arsenic ⁽²⁾	41	36
Cadmium	39	35
Copper	1,500	1,340
Lead	300	270
Mercury	17	16
Molybdenum ⁽²⁾		
Nickel	420	375
Selenium	100	89
Zinc	2,800	2,500

Notes:

⁽¹⁾Such total applications to be made on soils with the biosolids/soil mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

⁽²⁾The maximum cumulative application rate is currently under study by the USEPA. Research suggests that for Molybdenum a cumulative pollutant loading rate below 40 kg/hectare may be appropriate to reduce the risk of copper deficiency in grazing animals.

6130

TABLE 3
POLLUTANT CONCENTRATIONS

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Copper	1,500
Lead	300
Mercury	17
Molybdenum ⁽¹⁾	
Nickel	420
Selenium	100
Zinc	2,800
*Dry weight basis Note: ⁽¹⁾ The monthly average concentration is currently under study by the USEPA. Research suggests that a monthly average Molybdenum concentration below 40 mg/kg may be appropriate to reduce the risk of copper deficiency in grazing animals.	

6131

TABLE 4
ANNUAL POLLUTANT LOADING RATES

Pollutant	Annual Pollutant Loading Rate ⁽¹⁾ (per 365-day period)	
	(kilograms per hectare)	(pounds per acre)
Arsenic	2.0	1.8
Cadmium	1.9	1.7
Copper	75	67
Lead	15	13
Mercury	0.85	0.76
Molybdenum ⁽²⁾		
Nickel	21	19
Selenium	5.0	4.6
Zinc	140	125
Notes:		

(1)Such total applications to be made on soils with the biosolids/soils mixture pH adjusted to 6.0 or greater if the biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil pH in Virginia of less than 6.5 and lack of regulatory controls of soil pH adjustment after biosolids application ceases.

(2)The maximum cumulative application rate is currently under study by the USEPA.

6132 C. Domestic septage. The annual application rate for domestic septage applied to agricultural
6133 land, forest, or a reclamation site shall not exceed the annual application rate calculated using
6134 equation (1).

EQUATION (1)
$AAR = N/0.0026$
AAR = Annual application rate in gallons per acre per 365-day period.
N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

6135 D. Procedures to determine the annual whole sludge application rate for biosolids. 9VAC25-
6136 31-540 A 4 b requires that the product of the concentration for each pollutant listed in Table 4 of
6137 this section in biosolids sold or given away in a bag or other container for application to the land
6138 and the AWSAR for the biosolids not cause the annual pollutant loading rate for the pollutant in
6139 Table 4 to be exceeded. This section contains the procedure used to determine the AWSAR for
6140 a biosolids that does not cause the annual pollutant loading rates in Table 4 of this section to be
6141 exceeded.

6142 1. The relationship between the APLR for a pollutant and the AWSAR for a biosolids is
6143 shown in equation (2).

EQUATION (2)
$APLR = C \times AWSAR \times 0.001$
APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period
C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)
0.001 = A conversion factor

6144 2. To determine the AWSAR, equation (2) is rearranged into equation (3):

EQUATION (3)
$AWSAR = APLR/(C \times 0.001)$
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365-day period (dry weight basis)

APLR = Annual pollutant loading rate in kilograms per hectare per 365-day period

C = Pollutant concentration in milligrams per kilogram of total solids (dry weight basis)

0.001 = A conversion factor

3. The procedure used to determine the AWSAR for a biosolids is presented below.

a. Analyze a sample of the biosolids to determine the concentration for each of the pollutants listed in Table 4 of this section in the biosolids.

b. Using the pollutant concentrations from Step 1 and the APLRs from Table 4 of this section, calculate an AWSAR for each pollutant using equation (3) above.

c. The AWSAR for the biosolids is the lowest AWSAR calculated in Step 2.

9VAC25-31-543. Soils monitoring.

A. Soil shall be sampled and analyzed prior to biosolids application to determine site suitability and to provide background data. No sample analysis used to determine application rates shall be more than three years old at the time of biosolids land application. Soil shall be sampled and analyzed in accordance with Table 1 of this section. Reduced monitoring may also apply to one-time biosolids applications to forest or reclaimed lands. For background analysis, random composite soil samples from the zone of incorporation are required for infrequent applications and frequent applications at less than agronomic rates (total less than 15 dry tons per acre).

TABLE 1
SOIL TEST PARAMETERS FOR LAND APPLICATION SITES¹

Parameter
Soil pH (Std. Units)
Available phosphorus (ppm) ²
Extractable potassium (ppm)
Extractable sodium (mg/100g) ³
Extractable calcium (mg/100g)
Extractable magnesium (mg/100g)
Zinc (ppm)
Manganese (ppm)
¹ Note: Unless otherwise stated, analyses shall be reported on a dry weight basis. ² Available P shall be analyzed using one of the following methods: Mehlich I or Mehlich III. ³ Extractable sodium shall be analyzed only where biosolids known to be high in sodium will be land applied.

B. The department reserves the right to require the permit holder to conduct additional soil monitoring including, but not limited to, additional parameters, based on site-specific history or conditions.

C. Samples shall be collected in accordance with § 10.1-104.2 of the Code of Virginia.

6163 9VAC25-31-547. Groundwater monitoring.

6164 A. Monitoring wells may be required by the department for land treatment sites, sludge
6165 lagoons, biosolids land application sites, or biosolids storage facilities to monitor groundwater
6166 quality.

6167 B. If groundwater monitoring is required, a groundwater monitoring plan shall be submitted to
6168 the department for approval that includes at a minimum:

- 6169** 1. Geologic and hydrologic conditions at the site;
6170 2. Monitoring well design, placement, and construction;
6171 3. Sampling frequency;
6172 4. Sampling procedures, including quality assurance and quality control; and
6173 5. Collection of background samples.

6174 9VAC25-31-550. Management practices.

6175 A. All biosolids land application activities shall comply with the operational requirements of
6176 Part IX (9VAC25-32-303 et seq.) of 9VAC25-32 (Biosolids Program of the VPA Permit
6177 Regulation).

6178 B. Bulk biosolids shall not be applied to the land if it is likely to adversely affect a threatened
6179 or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC
6180 § 1533) or if the land application is likely to adversely affect its designated critical habitat.

6181 C. Bulk biosolids shall not be applied to agricultural land, forest, a public contact site, or a
6182 reclamation site that is flooded, frozen, or snow-covered so that the bulk biosolids enters a
6183 wetland or other surface waters except as provided in a VPDES permit or a permit issued pursuant
6184 to § 404 of the CWA.

6185 D. Bulk biosolids shall not be applied to agricultural land, forest, or a reclamation site that is
6186 10 meters or less from surface waters, unless otherwise specified by the board.

6187 E. Bulk biosolids shall be applied to agricultural land, forest, a public contact site, or a
6188 reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate
6189 for the bulk biosolids, unless, in the case of a reclamation site, otherwise specified by the board.

6190 F. Either a label shall be affixed to the bag or other container in which biosolids that is sold or
6191 given away for application to the land, or an information sheet shall be provided to the person
6192 who receives biosolids sold or given away in a bag or other container for application to the land.
6193 The label or information sheet shall contain the following information:

- 6194** 1. The name and address of the person who prepared the biosolids that is sold or given
6195 away in a bag or other container for application to the land;
6196 2. A statement that application of the biosolids to the land is prohibited except in
6197 accordance with the instructions on the label or information sheet; and
6198 3. The annual whole sludge application rate for the biosolids that does not cause any of
6199 the annual pollutant loading rates in Table 4 of 9VAC25-31-540 to be exceeded.

6200 9VAC25-31-560. Operational standards, pathogens, and vector attraction reduction.

6201 A. Pathogens - biosolids.

6202 1. The Class A pathogen requirements in 9VAC25-31-710 A or the Class B pathogen
6203 requirements and site restrictions in 9VAC25-31-720 B shall be met when bulk biosolids
6204 is applied to agricultural land, forest, a public contact site, or a reclamation site.

6205 2. The Class A pathogen requirements in 9VAC25-31-710 A shall be met when bulk
6206 biosolids is applied to a lawn or a home garden.

6207 3. The Class A pathogen requirements in 9VAC25-31-710 A shall be met when biosolids
6208 is sold or given away in a bag or other container for application to the land.

6209 B. Pathogens - domestic septage. The requirements in 9VAC25-31-710 C shall be met when
6210 domestic septage is applied to agricultural land, forest, or a reclamation site.

6211 C. Vector attraction reduction - biosolids.

6212 1. One of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B
6213 10 shall be met when bulk biosolids is applied to agricultural land, forest, a public contact
6214 site, or a reclamation site.

6215 2. One of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8
6216 shall be met when bulk biosolids is applied to a lawn or a home garden.

6217 3. One of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8
6218 shall be met when biosolids is sold or given away in a bag or other container for application
6219 to the land.

6220 D. Vector attraction reduction - domestic septage. The vector attraction reduction
6221 requirements in 9VAC25-31-720 B 9, B 10, or B 12 shall be met when domestic septage is applied
6222 to agricultural land, forest, or a reclamation site.

6223 **9VAC25-31-570. Frequency of monitoring.**

6224 A. Biosolids.

6225 1. The frequency of monitoring for the pollutants listed in Tables 1 through 4 of 9VAC25-
6226 31-540; the pathogen density requirements in 9VAC25-31-710 A and B 2 through B 4; and
6227 the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and
6228 B 8 shall be the frequency in Table 1 of this section.

TABLE 1
FREQUENCY OF MONITORING--LAND APPLICATION

Amount of biosolids* (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times a year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)
Equal to or greater than 15,000	once per month (12 times per year)

*Either the amount of bulk biosolids applied to the land or the amount of biosolids prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

6229 2. After the biosolids has been monitored for two years at the frequency in Table 1 of this
6230 section, the board may reduce the frequency of monitoring for pollutant concentrations
6231 and for the pathogen density requirements in 9VAC25-31-710 A 5 b and c.

6232 B. Domestic septage. If either the pathogen requirements in 9VAC25-31-710 C 2 or the vector
6233 attraction reduction requirements in 9VAC25-31-720 B 12 are met when domestic septage is
6234 applied to agricultural land, forest, or a reclamation site, each container of domestic septage
6235 applied to the land shall be monitored for compliance with those requirements.

6236 **9VAC25-31-580. Recordkeeping.**

6237 A. Biosolids.

6238 1. The person who prepares the biosolids in 9VAC25-31-510 B 1 or E shall develop the
6239 following information and shall retain the information for five years:

- a. The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the biosolids;
- b. The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-31-710 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";
- c. A description of how the Class A pathogen requirements in 9VAC25-31-710 A are met; and
- d. A description of how one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 is met.
2. The person who derives the material in 9VAC25-31-510 C 1 or in 9VAC25-31-510 F shall develop the following information and shall retain the information for five years:
- a. The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the material;
- b. The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-31-710 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";
- c. A description of how the Class A pathogen requirements in 9VAC25-31-710 A are met; and
- d. A description of how one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 is met.
3. If the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and the vector attraction reduction requirements in either 9VAC25-31-720 B 9 or B 10 are met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:
- a. The person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:
- (1) The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the bulk biosolids;
- (2) The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in 9VAC25-31-710 A was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and

6287 (3) A description of how the pathogen requirements in 9VAC25-31-710 A are met.

6288 b. The person who applies the bulk biosolids shall develop the following information

6289 and shall retain the information for five years:

6290 (1) The following certification statement:

6291 "I certify, under penalty of law, that the information that will be used to determine

6292 compliance with the management practices in 9VAC25-31-550 and the vector

6293 attraction reduction requirement in (insert either 9VAC25-31-720 B 9 or B 10) was

6294 prepared under my direction and supervision in accordance with the system designed

6295 to ensure that qualified personnel properly gather and evaluate this information. I am

6296 aware that there are significant penalties for false certification including fine and

6297 imprisonment.";

6298 (2) A description of how the management practices in 9VAC25-31-550 are met for

6299 each site on which bulk biosolids is applied; and

6300 (3) A description of how the vector attraction reduction requirements in either 9VAC25-

6301 31-720 B 9 or B 10 are met for each site on which bulk biosolids is applied.

6302 4. If the pollutant concentrations in 9VAC25-31-540 B 3 and the Class B pathogen

6303 requirements in 9VAC25-31-710 B are met when bulk biosolids is applied to agricultural

6304 land, forest, a public contact site, or a reclamation site:

6305 a. The person who prepares the bulk biosolids shall develop the following information

6306 and shall retain the information for five years:

6307 (1) The concentration of each pollutant listed in Table 3 of 9VAC25-31-540 in the bulk

6308 biosolids;

6309 (2) The following certification statement:

6310 "I certify under, penalty of law, that the information that will be used to determine

6311 compliance with the Class B pathogen requirements in 9VAC25-31-710 B and the

6312 vector attraction reduction requirement in (insert one of the vector attraction reduction

6313 requirements in 9VAC25-31-720 B 1 through B 8, if one of those requirements is met)

6314 was prepared under my direction and supervision in accordance with the system

6315 designed to ensure that qualified personnel properly gather and evaluate this

6316 information. I am aware that there are significant penalties for false certification

6317 including the possibility of fine and imprisonment.";

6318 (3) A description of how the Class B pathogen requirements in 9VAC25-31-710 B are

6319 met; and

6320 (4) When one of the vector attraction reduction requirements in 9VAC25-31-720 B 1

6321 through B 8 is met, a description of how the vector attraction reduction requirement is

6322 met.

6323 b. The person who applies the bulk biosolids shall develop the following information

6324 and shall retain the information for five years:

6325 (1) The following certification statement:

6326 "I certify, under penalty of law, that the information that will be used to determine

6327 compliance with the management practices in 9VAC25-31-550, the site restrictions in

6328 9VAC25-31-710 B 5, and the vector attraction reduction requirements in (insert either

6329 9VAC25-31-720 B 9 or B 10, if one of those requirements is met) was prepared for

6330 each site on which bulk biosolids is applied under my direction and supervision in

6331 accordance with the system designed to ensure that qualified personnel properly

6332 gather and evaluate this information. I am aware that there are significant penalties for

6333 false certification including the possibility of fine and imprisonment.";

- (2) A description of how the management practices in 9VAC25-31-550 are met for each site on which bulk biosolids is applied;
- (3) A description of how the site restrictions in 9VAC25-31-710 B 5 are met for each site on which bulk biosolids is applied;
- (4) When the vector attraction reduction requirement in either 9VAC25-31-720 B 9 or B 10 is met, a description of how the vector attraction reduction requirement is met; and
- (5) The date bulk biosolids is applied to each site.
5. If the requirements in 9VAC25-31-540 A 2 a are met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site:
- a. The person who prepares the bulk biosolids shall develop the following information and shall retain the information for five years:
- (1) The concentration of each pollutant listed in Table 1 of 9VAC25-31-540 in the bulk biosolids;
- (2) The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert either 9VAC25-31-710 A or B and the vector attraction reduction requirement in insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8, if one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";
- (3) A description of how the pathogen requirements in either 9VAC25-31-710 A or B are met; and
- (4) When one of the vector attraction requirements in 9VAC25-31-720 B 1 through B 8 is met, a description of how the vector attraction requirement is met.
- b. The person who applies the bulk biosolids shall develop the following information, retain the information in 9VAC25-31-580 A 5 b (1) through b (7) indefinitely, and retain the information in 9VAC25-31-580 A 5 b (8) through b (13) for five years:
- (1) The location, by either street address or latitude and longitude, of each site on which bulk biosolids is applied;
- (2) The number of hectares in each site on which bulk biosolids is applied;
- (3) The date bulk biosolids is applied to each site;
- (4) The cumulative amount of each pollutant (i.e., kilograms) listed in Table 2 of 9VAC25-31-540 in the bulk biosolids applied to each site, including the amount in 9VAC25-31-530 E 2 c;
- (5) The amount of biosolids (i.e., metric tons) applied to each site;
- (6) The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the requirements to obtain information in 9VAC25-31-530 E 2 was prepared for each site on which bulk biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";

- (7) A description of how the requirements to obtain information in 9VAC25-31-530 E 2 are met;
- (8) The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-31-550 was prepared for each site on which bulk biosolids is applied under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";
- (9) A description of how the management practices in 9VAC25-31-550 are met for each site on which bulk biosolids is applied;
- (10) The following certification statement when the bulk biosolids meets the Class B pathogen requirements in 9VAC25-31-710 B:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the site restrictions in 9VAC25-31-710 B 5 was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including fine and imprisonment.";
- (11) A description of how the site restrictions in 9VAC25-31-710 B 5 are met for each site on which Class B bulk biosolids is applied;
- (12) The following certification statement when the vector attraction reduction requirement in either 9VAC25-31-720 B 9 or B 10 is met:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the vector attraction reduction requirement in (insert either 9VAC25-31-720 B 9 or B 10) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."; and
- (13) If the vector attraction reduction requirements in either 9VAC25-31-720 B 9 or B 10 are met, a description of how the requirements are met.
6. If the requirements in 9VAC25-31-540 A 4 b are met when biosolids is sold or given away in a bag or other container for application to the land, the person who prepares the biosolids that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:
- The annual whole sludge application rate for the biosolids that does not cause the annual pollutant loading rates in Table 4 of 9VAC25-31-540 to be exceeded;
 - The concentration of each pollutant listed in Table 4 of 9VAC25-31-540 in the biosolids;
 - The following certification statement:
- "I certify, under penalty of law, that the information that will be used to determine compliance with the management practice in 9VAC25-31-550 E, the Class A pathogen requirement in 9VAC25-31-710 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

6426 d. A description of how the Class A pathogen requirements in 9VAC25-31-710 A are
6427 met; and

6428 e. A description of how one of the vector attraction requirements in 9VAC25-31-720 B
6429 1 through B 8 is met.

6430 B. Domestic septage. When domestic septage is applied to agricultural land, forest, or a
6431 reclamation site, the person who applies the domestic septage shall develop the following
6432 information and shall retain the information for five years:

6433 1. The location, by either street address or latitude and longitude, of each site on which
6434 domestic septage is applied;

6435 2. The number of acres in each site on which domestic septage is applied;

6436 3. The date domestic septage is applied to each site;

6437 4. The nitrogen and phosphorus requirement for the crop or vegetation grown on each site
6438 during a 365-day period;

6439 5. The rate, in gallons per acre per 365-day period, at which domestic septage is applied
6440 to each site;

6441 6. The following certification statement:

6442 "I certify, under penalty of law, that the information that will be used to determine
6443 compliance with the pathogen requirements in (insert either 9VAC25-31-710 C 1 or 2)
6444 and the vector attraction reduction requirements in (insert 9VAC25-31-720 B 9, 10, or
6445 12) was prepared under my direction and supervision in accordance with the system
6446 designed to ensure that qualified personnel properly gather and evaluate this
6447 information. I am aware that there are significant penalties for false certification
6448 including the possibility of fine and imprisonment.";

6449 7. A description of how the pathogen requirements in either 9VAC25-31-710 C 1 or 2 are
6450 met; and

6451 8. A description of how the vector attraction reduction requirements in 9VAC25-31-720 B
6452 9, 10, or 12 are met.

6453 **9VAC25-31-590. Reporting.**

6454 A. Class I sludge management facilities, POTWs with a design flow rate equal to or greater
6455 than one million gallons per day, and POTWs that serve 10,000 people or more shall submit the
6456 following information to the department:

6457 1. The information in 9VAC25-31-580 A, except the information in 9VAC25-31-580 A 3 b,
6458 4 b and 5 b, for the appropriate requirements on February 19 of each year for the previous
6459 calendar year's activity; and

6460 2. The information in 9VAC25-31-580 A 5 b (1) through (7) on February 19 of each year
6461 for the previous calendar year's activity when 90% or more of any of the cumulative
6462 pollutant loading rates in Table 2 of 9VAC25-31-540 is reached at a land application site.

6463 B. An activity report shall be submitted (electronically or postmarked) to the department by
6464 the 15th of each month for land application activity that occurred in the previous calendar month,
6465 unless another date is specified in the permit in accordance with 9VAC25-32-80 I 4. The report
6466 shall indicate those sites where land application activities took place during the previous month.
6467 If no land application occurs under a permit during the calendar month, a report shall be submitted
6468 stating that no land application occurred.

6469 C. Records shall be maintained documenting the required treatment and quality
6470 characteristics and the maximum allowable land application loading rates established for biosolids
6471 use. In addition, operational monitoring results shall verify that required sludge treatment has
6472 achieved the specified levels of pathogen control and vector attraction reductions (9VAC25-31-

710 and 9VAC25-31-720). Adequate records of biosolids composition, treatment classification, and biosolids application rates and methods of application for each site shall be maintained by the generator and owner.

D. The generator and owner shall maintain the records for a minimum period of five years. Sites receiving frequent applications of biosolids that meet or exceed maximum cumulative constituent loadings and dedicated disposal sites should be properly referenced for future land transactions (Sludge Disposal Site Dedication Form).

Article 3 Surface Disposal

9VAC25-31-600. Applicability.

A. This article applies to any person who prepares sewage sludge that is placed on a surface disposal site, to the owner/operator of a surface disposal site, to sewage sludge placed on a surface disposal site, and to a surface disposal site.

B. This article does not apply to sewage sludge stored on the land or to the land on which sewage sludge is stored. It also does not apply to sewage sludge that remains on the land for longer than two years when the person who prepares the sewage sludge demonstrates that the land on which the sewage sludge remains is not an active sewage sludge unit. The demonstration shall include the following information, which shall be retained by the person who prepares the sewage sludge for the period that the sewage sludge remains on the land:

1. The name and address of the person who prepares the sewage sludge;
2. The name and address of the person who either owns the land or leases the land;
3. The location, by either street address or latitude and longitude, of the land;
4. An explanation of why sewage sludge needs to remain on the land for longer than two years prior to final use or disposal; and
5. The approximate time period when the sewage sludge will be used or disposed.

C. This article does not apply to sewage sludge treated on the land or to the land on which sewage sludge is treated.

9VAC25-31-610. [Reserved]

9VAC25-31-620. General requirements.

A. No person shall place sewage sludge on an active sewage sludge unit unless the requirements in this article are met.

B. An active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit issued pursuant to the law and § 402 or 404 of the CWA, shall close by March 22, 1994, unless, in the case of an active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time, otherwise specified by the board.

C. The owner/operator of an active sewage sludge unit shall submit a written closure and post closure plan to the department 180 days prior to the date that the active sewage sludge unit closes. The plan shall describe how the sewage sludge unit will be closed and, at a minimum, shall include:

1. A discussion of how the leachate collection system will be operated and maintained for three years after the sewage sludge unit closes if the sewage sludge unit has a liner and leachate collection system;
2. A description of the system used to monitor for methane gas in the air in any structures within the surface disposal site and in the air at the property line of the surface disposal site, as required in 9VAC25-31-640 J 2; and

3. A discussion of how public access to the surface disposal site will be restricted for three years after the last sewage sludge unit in the surface disposal site closes.
- D. The owner of a surface disposal site shall provide written notification to the subsequent owner of the site that sewage sludge was placed on the land.

9VAC25-31-630. Pollutant limits (other than domestic septage).

A. Active sewage sludge unit without a liner and leachate collection system.

1. Except as provided in subdivision A 2 and subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit shall not exceed the concentration for the pollutant in Table 1 of this section.

TABLE 1. POLLUTANT CONCENTRATIONS--ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION	
Pollutant Concentration	Concentration (milligrams per kilogram*)
Arsenic	73
Chromium	600
Nickel	420
*Dry weight basis	

2. Except as provided in subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit whose boundary is less than 150 meters from the property line of the surface disposal site shall not exceed the concentration determined using the following procedure.

- a. The actual distance from the active sewage sludge unit boundary to the property line of the surface disposal site shall be determined.
- b. The concentration of each pollutant listed in Table 2 of this section in the sewage sludge shall not exceed the concentration in Table 2 of this section that corresponds to the actual distance in subdivision 2 a of this subsection.

TABLE 2--POLLUTANT CONCENTRATIONS ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION SYSTEM THAT HAS A UNIT BOUNDARY TO PROPERTY LINE DISTANCE LESS THAN 150 METERS			
Unit boundary to property line	Pollutant concentration*		
Distance (meters)	Arsenic (mg/kg)	Chromium (mg/kg)	Nickel (mg/kg)
0 to less than 25	30	200	210
25 to less than 50	34	220	240
50 to less than 75	39	260	270
75 to less than 100	46	300	320
100 to less than 125	53	360	390

125 to less than 150	62	450	420
*Dry weight basis			

B. Active sewage sludge unit without a liner and leachate collection system - site-specific limits.

1. At the time of permit application, the owner/operator of a surface disposal site may request site-specific pollutant limits in accordance with subdivision B 2 of this section for an active sewage sludge unit without a liner and leachate collection system when the existing values for site parameters specified by the board are different from the values for those parameters used to develop the pollutant limits in Table 1 of this section and when the board determines that site-specific pollutant limits are appropriate for the active sewage sludge unit.

2. The concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit without a liner and leachate collection system shall not exceed either the concentration for the pollutant determined during a site-specific assessment, as specified by the board, or the existing concentration of the pollutant in the sewage sludge, whichever is lower.

9VAC25-31-640. Management practices.

A. Sewage sludge shall not be placed on an active sewage sludge unit if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533 et seq.) or its designated critical habitat.

B. An active sewage sludge unit shall not restrict the flow of a base flood.

C. When a surface disposal site is located in a seismic impact zone, an active sewage sludge unit shall be designed to withstand the maximum recorded horizontal ground level acceleration.

D. An active sewage sludge unit shall be located 60 meters or more from a fault that has displacement in Holocene time, unless otherwise specified by the board.

E. An active sewage sludge unit shall not be located in an unstable area.

F. An active sewage sludge unit shall not be located in a wetland, except as provided in a permit issued by the board.

G. 1. Run-off from an active sewage sludge unit shall be collected and shall be disposed in accordance with this chapter and any other applicable requirements.

2. The run-off collection system for an active sewage sludge unit shall have the capacity to handle run-off from a 24-hour, 25-year storm event.

H. The leachate collection system for an active sewage sludge unit that has a liner and leachate collection system shall be operated and maintained during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

I. Leachate from an active sewage sludge unit that has a liner and leachate collection system shall be collected and shall be disposed in accordance with the applicable requirements during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

J. When a cover is placed on an active sewage sludge unit, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas during the period that the sewage sludge unit is active and the concentration of methane gas in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas during the period that the sewage sludge unit is active.

When a final cover is placed on a sewage sludge unit at closure, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas for three years after the sewage sludge unit closes and the

6582 concentration of methane gas in air at the property line of the surface disposal site shall not
6583 exceed the lower explosive limit for methane gas for three years after the sewage sludge unit
6584 closes, unless otherwise specified by the board.

6585 K. A food crop, a feed crop, or a fiber crop shall not be grown on an active sewage sludge unit
6586 unless the owner/operator of the surface disposal site demonstrates to the board that through
6587 management practices, public health and the environment are protected from any reasonably
6588 anticipated adverse effects of pollutants in sewage sludge when crops are grown.

6589 L. Animals shall not be grazed on an active sewage sludge unit unless the owner/operator of
6590 the surface disposal site demonstrates to the board that through management practices, public
6591 health and the environment are protected from any reasonably anticipated adverse effects of
6592 pollutants in sewage sludge when animals are grazed.

6593 M. Public access to a surface disposal site shall be restricted for the period that the surface
6594 disposal site contains an active sewage sludge unit and for three years after the last active
6595 sewage sludge unit in the surface disposal site closes.

6596 N. Sewage sludge placed on an active sewage sludge unit shall not contaminate an aquifer.
6597 Results of a groundwater monitoring program developed by a qualified groundwater scientist or
6598 a certification by a qualified groundwater scientist shall be used to demonstrate that sewage
6599 sludge placed on an active sewage sludge unit does not contaminate an aquifer.

6600 **9VAC25-31-650. Operational standards - pathogens and vector attraction reduction.**

6601 A. Pathogens-sewage sludge (other than domestic septage). The Class A pathogens
6602 requirements in 9VAC25-31-710 A or one of the Class B pathogen requirements in 9VAC25-31-
6603 710 B 2 through B 4 shall be met when sewage sludge is placed on an active sewage sludge unit,
6604 unless the vector attraction reduction requirement in 9VAC25-31-720 B 11 is met.

6605 B. Vector attraction reduction - sewage sludge (other than domestic septage). One of the
6606 vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 11 shall be met when
6607 sewage sludge is placed on an active sewage sludge unit.

6608 C. Vector attraction reduction - domestic septage. One of the vector attraction reduction
6609 requirement in 9VAC25-31-720 B 9 through B 12 shall be met when domestic septage is placed
6610 on an active sewage sludge unit.

6611 **9VAC25-31-660. Frequency of monitoring.**

6612 A. Sewage sludge (other than domestic septage).

6613 1. The frequency of monitoring for the pollutants in Tables 1 and 2 of 9VAC25-31-630; the
6614 pathogen density requirements in 9VAC25-31-710 A and in 9VAC25-31-710 B 2; and the
6615 vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and B 8
6616 for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table
6617 1 of this section.

TABLE 1
FREQUENCY OF MONITORING--SURFACE DISPOSAL

Amount of sewage sludge* (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)

Equal to or greater than 15,000

once per month (12 times per year)

*Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the board may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9VAC25-31-710 A 5 b and c.

B. Domestic septage. If the vector attraction reduction requirements in 9VAC25-31-720 B 12 are met when domestic septage is placed on an active sewage sludge unit, each container of domestic septage shall be monitored for compliance with those requirements.

C. Air. Air in structures within a surface disposal site and at the property line of the surface disposal site shall be monitored continuously for methane gas during the period that the surface disposal site contains an active sewage sludge unit on which the sewage sludge is covered and for three years after a sewage sludge unit closes when a final cover is placed on the sewage sludge.

9VAC25-31-670. Recordkeeping.

A. When sewage sludge (other than domestic septage) is placed on an active sewage sludge unit:

1. The person who prepares the sewage sludge shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 1 of 9VAC25-31-630 in the sewage sludge when the pollutant concentrations in Table 1 of 9VAC25-31-630 are met;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the pathogen requirements in (insert 9VAC25-31-710 A, B 2, B 3, or B 4 when one of those requirements is met) and the vector attraction reduction requirements in (insert one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 when one of those requirements is met) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the pathogen requirements in 9VAC25-31-710 A, B 2, B 3, or B 4 are met when one of those requirements is met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8 is met when one of those requirements is met.

2. The owner/operator of the surface disposal site shall develop the following information and shall retain that information for five years:

a. The concentration of each pollutant listed in Table 2 of 9VAC25-31-630 in the sewage sludge when the pollutant concentrations in Table 2 of 9VAC25-31-630 are met or when site-specific pollutant limits in 9VAC25-31-630 B are met;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-31-640 and the vector attraction reduction requirement in (insert one of the requirements in 9VAC25-31-720 B 9 through B 11, if one of those requirements is met) was prepared under my direction

- 6662 and supervision in accordance with the system designed to ensure that qualified
6663 personnel properly gather and evaluate this information. I am aware that there are
6664 significant penalties for false certification including the possibility of fine and
6665 imprisonment.";
- 6666 c. A description of how the management practices in 9VAC25-31-640 are met; and
6667 d. A description of how the vector attraction reduction requirements in 9VAC25-31-720
6668 B 9 through B 11 are met, if one of those requirements is met.
- 6669 B. When domestic septage is placed on a surface disposal site.
- 6670 1. If the vector attraction reduction requirements in 9VAC25-31-720 B 12 are met, the
6671 person who places the domestic septage on the surface disposal site shall develop the
6672 following information and shall retain the information for five years:
- 6673 a. The following certification statement:
- 6674 "I certify, under penalty of law, that the information that will be used to determine
6675 compliance with the vector attraction reduction requirements in 9VAC25-31-720 B 12
6676 was prepared under my direction and supervision in accordance with the system
6677 designed to ensure that qualified personnel properly gather and evaluate this
6678 information. I am aware that there are significant penalties for false certification
6679 including the possibility of fine and imprisonment"; and
- 6680 b. A description of how the vector attraction reduction requirements in 9VAC25-31-720
6681 B 12 are met.
- 6682 2. The owner/operator of the surface disposal site shall develop the following information
6683 and shall retain that information for five years:
- 6684 a. The following certification statement:
- 6685 "I certify, under penalty of law, that the information that will be used to determine
6686 compliance with the management practices in 9VAC25-31-640 and the vector
6687 attraction reduction requirements in (insert 9VAC25-31-720 B 9 through B 11 when
6688 one of those requirements is met) was prepared under my direction and supervision
6689 in accordance with the system designed to ensure that qualified personnel properly
6690 gather and evaluate this information. I am aware that there are significant penalties for
6691 false certification including the possibility of fine or imprisonment.";
- 6692 b. A description of how the management practices in 9VAC25-31-640 are met; and
6693 c. A description how the vector attraction reduction requirements in 9VAC25-31-720 B
6694 9 through B 11 are met, if one of those requirements is met.

6695 **9VAC25-31-680. Reporting.**

6696 Class I sludge management facilities, POTWs with a design flow rate equal to or greater than
6697 one million gallons per day, and POTWs that serve 10,000 people or more shall submit the
6698 information in 9VAC25-31-670 A to the department on February 19 of each year for the previous
6699 year's activity.

6700 **Article 4**
6701 **Pathogens and Vector Attraction Reduction**

6702 **9VAC25-31-690. Scope.**

- 6703 A. This article contains the requirements for biosolids to be classified either Class A or Class
6704 B with respect to pathogens.
- 6705 B. This article contains the site restrictions for land on which a Class B biosolids is applied.
- 6706 C. This article contains the pathogen requirements for domestic septage applied to agricultural
6707 land, forest, or a reclamation site.

D. This article contains alternative vector attraction reduction requirements for biosolids that is applied to the land or sewage sludge that is placed on a surface disposal site.

9VAC25-31-700. [Reserved]

9VAC25-31-710. Pathogens.

A. Biosolids - Class A.

1. The requirement in subdivision 2 of this subsection and the requirements in either subdivisions 3, 4, 5, 6, 7, or 8 of this subsection shall be met for a biosolids to be classified Class A with respect to pathogens.

2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9VAC25-31-720, except the vector attraction reduction requirements in 9VAC25-31-720 B 6 through B 8, are met.

3. Class A - Alternative 1.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation (1), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

EQUATION (1)
$D = 131,700,000/10^{0.1400t}$
D = time in days
t = temperature in degrees Celsius

(2) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation (1).

(3) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (1).

(4) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (2).

EQUATION (2)
$D = 50,070,000/10^{0.1400t}$
D = time in days
t = temperature in degrees Celsius

4. Class A - Alternative 2.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. (1) The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(3) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

5. Class A - Alternative 3.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(3) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(4) After the enteric virus reduction in subdivision 5 b (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be

Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 b (3) of this subsection.

c. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(3) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(4) After the viable helminth ova reduction in subdivision 5 c (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 c (3) of this subsection.

6. Class A - Alternative 4.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella* sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. The density of enteric viruses in the biosolids shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F, unless otherwise specified by the board.

c. The density of viable helminth ova in the biosolids shall be less than one per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F unless otherwise specified by the board.

7. Class A - Alternative 5.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella*, sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag

6835 or other container for application to the land; or at the time the biosolids or material
6836 derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C,
6837 E, or F.

6838 b. Biosolids that is used or disposed shall be treated in one of the processes to further
6839 reduce pathogens described in subsection E of this section.

6840 8. Class A - Alternative 6.

6841 a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most
6842 Probable Number per gram of total solids (dry weight basis), or the density of
6843 Salmonella, sp. bacteria in the biosolids shall be less than three Most Probable
6844 Number per four grams of total solids (dry weight basis) at the time the biosolids is
6845 used or disposed; at the time the biosolids is prepared for sale or give away in a bag
6846 or other container for application to the land; or at the time the biosolids or material
6847 derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C,
6848 E, or F.

6849 b. Biosolids that is used or disposed shall be treated in a process that is equivalent to
6850 a process to further reduce pathogens, as determined by the board.

6851 B. Biosolids - Class B.

6852 1. The requirements in either subdivision 3, 4, or 5 of this subsection shall be met for a
6853 biosolids to be classified Class B with respect to pathogens.

6854 2. The site restrictions in subdivision 6 of this subsection shall be met when biosolids that
6855 meets the Class B pathogen requirements in subdivision 3, 4, or 5 of this subsection is
6856 applied to the land.

6857 3. Class B - Alternative 1.

6858 a. Seven representative samples of the biosolids that is used or disposed shall be
6859 collected.

6860 b. The geometric mean of the density of fecal coliform in the samples collected in
6861 subdivision 3 a of this subsection shall be less than either 2,000,000 Most Probable
6862 Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units
6863 per gram of total solids (dry weight basis).

6864 4. Class B - Alternative 2. Biosolids that is used or disposed shall be treated in one of the
6865 processes to significantly reduce pathogens described in subsection D of this section.

6866 5. Class B - Alternative 3. Biosolids that is used or disposed shall be treated in a process
6867 that is equivalent to a process to significantly reduce pathogens, as determined by the
6868 board.

6869 6. Site restrictions.

6870 a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally
6871 above the land surface shall not be harvested for 14 months after application of
6872 biosolids.

6873 b. Food crops with harvested parts below the surface of the land shall not be harvested
6874 for 20 months after application of biosolids when the biosolids remains on the land
6875 surface for four months or longer prior to incorporation into the soil.

6876 c. Food crops with harvested parts below the surface of the land shall not be harvested
6877 for 38 months after application of biosolids when the biosolids remains on the land
6878 surface for less than four months prior to incorporation into the soil.

6879 d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after
6880 application of biosolids.

- 6881 e. Animals shall not be grazed on the land for 30 days after application of biosolids.
- 6882 f. Turf grown on land where biosolids is applied shall not be harvested for one year
- 6883 after application of the biosolids when the harvested turf is placed on either land with
- 6884 a high potential for public exposure or a lawn, unless otherwise specified by the board.
- 6885 g. Public access to land with a high potential for public exposure shall be restricted for
- 6886 one year after application of biosolids.
- 6887 h. Public access to land with a low potential for public exposure shall be restricted for
- 6888 30 days after application of biosolids.
- 6889 C. Domestic septage: The site restrictions in subdivision B 6 of this section shall be met when
- 6890 domestic septage is applied to agricultural land, forest, or a reclamation site.
- 6891 D. Processes to significantly reduce pathogens (PSRP).
- 6892 1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic
- 6893 conditions for a specific mean cell residence time at a specific temperature. Values for the
- 6894 mean cell residence time and temperature shall be between 40 days at 20°C and 60 days
- 6895 at 15°C.
- 6896 2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The
- 6897 sewage sludge dries for a minimum of three months. During two of the three months, the
- 6898 ambient average daily temperature is above 0°C.
- 6899 3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean
- 6900 cell residence time at a specific temperature. Values for the mean cell residence time and
- 6901 temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.
- 6902 4. Composting. Using either the within-vessel, static aerated pile, or windrow composting
- 6903 methods, the temperature of the sewage sludge is raised to 40°C or higher and remains
- 6904 at 40°C or higher for five days. For four hours during the five days, the temperature in the
- 6905 compost pile exceeds 55°C.
- 6906 5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the
- 6907 sewage sludge to 12 after two hours of contact.
- 6908 E. Processes to further reduce pathogens (PFRP).
- 6909 1. Composting. Using either the within-vessel composting method or the static aerated
- 6910 pile composting method, the temperature of the sewage sludge is maintained at 55°C or
- 6911 higher for three days. Using the windrow composting method, the temperature of the
- 6912 sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period
- 6913 when the compost is maintained at 55°C or higher, there shall be a minimum of five
- 6914 turnings of the windrow.
- 6915 2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to
- 6916 reduce the moisture content of the sewage sludge to 10.0% or lower. Either the
- 6917 temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of
- 6918 the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds
- 6919 80°C.
- 6920 3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for
- 6921 30 minutes.
- 6922 4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to
- 6923 maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10
- 6924 days at 55°C to 60°C.
- 6925 5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at
- 6926 dosages of at least 1.0 megarad at room temperature (ca. 20°C).

6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

9VAC25-31-720. Vector attraction reduction.

A. Vector attraction reduction requirements:

1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of this section shall be met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when bulk biosolids is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when biosolids is sold or given away in a bag or other container for application to the land.

4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site and one of the vector attraction reduction requirements in subdivisions B 9 through B 12 of this section shall be met when domestic septage is placed on an active sewage sludge unit.

B. Vector attraction reduction options:

1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%, calculated according to the method in 9VAC25-31-490 B 8.

2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

3. When the 38% volatile solids reduction requirement in subdivision 1 of this section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.
7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.
8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.
9. Sewage sludge injection requirements:
- a. Sewage sludge shall be injected below the surface of the land.
 - b. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.
 - c. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.
10. Sewage sludge incorporation requirements:
- a. Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the board.
 - b. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.
11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.
12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

Part VII

General Pretreatment Regulations for Existing and New Sources of Pollution

9VAC25-31-730. Purpose and applicability.

A. This part establishes the responsibilities of state and local government, industry and the public to implement the national pretreatment standards and requirements to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

B. This part applies:

- 1. To pollutants from nondomestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs;
- 2. To POTWs which receive wastewater from sources subject to national pretreatment standards; and
- 3. To any new or existing source subject to pretreatment standards. National pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

9VAC25-31-740. Objectives of general pretreatment regulations.

By establishing the responsibilities of government and industry to implement national pretreatment standards and requirements this part fulfills three objectives:

- 7019 A. To prevent the introduction of pollutants into POTWs which will interfere with the
7020 operation of a POTW, including interference with its use or disposal of municipal sludge;
7021 B. To prevent the introduction of pollutants into POTWs which will pass through the
7022 treatment works or otherwise be incompatible with such works; and
7023 C. To improve opportunities to recycle and reclaim municipal and industrial wastewaters
7024 and sludges.

7025 **9VAC25-31-750. Incorporation of federal regulations.**

7026 The following federal regulations are hereby incorporated into this chapter:

- 7027 1. 40 CFR Part 403, Appendix B - E, and Appendix G.
7028 2. 40 CFR Part 136, Guidelines for Establishing Test Procedures for the Analysis of
7029 Pollutants.

7030 **9VAC25-31-760. Local law.**

7031 Nothing in this part is intended to affect any pretreatment requirements, including any
7032 standards or prohibitions, established by local law as long as the local requirements are not less
7033 stringent than any set forth in national pretreatment standards, or any other requirements or
7034 prohibitions established under the Clean Water Act, the law, or this chapter.

7035 **9VAC25-31-770. National pretreatment standards: prohibited discharges.**

7036 A. 1. General prohibitions. A user may not introduce into any POTW any pollutant or pollutants
7037 which cause pass through, interference or violation of water quality standards. These general
7038 prohibitions and the specific prohibitions in subsection B of this section apply to each user
7039 introducing pollutants into a POTW whether or not the user is subject to other national
7040 pretreatment standards or any national, state, or local pretreatment requirements.

7041 2. Affirmative defenses. A user shall have an affirmative defense in any action brought
7042 against it alleging a violation of the general prohibitions established in subdivision A 1 of
7043 this section and the specific prohibitions in subdivisions B 3, 4, 5, 6, and 7 of this section
7044 where the user can demonstrate that:

7045 a. It did not know or have reason to know that its discharge, alone or in conjunction
7046 with a discharge or discharges from other sources, would cause pass through or
7047 interference; and

7048 b. (1) A local limit designed to prevent pass through or interference or both, as the
7049 case may be, was developed in accordance with subsection C of this section for each
7050 pollutant in the user's discharge that caused pass through or interference, and the user
7051 was in compliance with each such local limit directly prior to and during the pass
7052 through or interference; or

7053 (2) If a local limit designed to prevent pass through or interference or both, as the case
7054 may be, has not been developed in accordance with subsection C of this section for
7055 the pollutant or pollutants that caused the pass through or interference, the user's
7056 discharge directly prior to and during the pass through or interference did not change
7057 substantially in nature or constituents from the user's prior discharge activity when the
7058 POTW was regularly in compliance with the POTW's VPDES permit requirements and,
7059 in the case of interference, applicable requirements for sewage sludge use or disposal.

7060 B. Specific prohibitions. In addition, the following pollutants shall not be introduced into a
7061 POTW:

- 7062 1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited
7063 to, wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test
7064 methods specified in 40 CFR 261.21;

2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;
3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;
4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate or pollutant concentration which will cause interference with the POTW;
5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F) unless the director, upon request of the POTW, approves alternate temperature limits;
6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or
8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

C. When specific limits must be developed by POTW.

1. Each POTW developing a POTW pretreatment program pursuant to 9VAC25-31-800 shall develop and enforce specific limits to implement the prohibitions listed in subdivisions A 1 and subsection B of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.
2. All other POTW's shall, in cases where pollutants contributed by users result in interference, pass through or water quality standards violations and such violation is likely to recur, develop and enforce specific effluent limits for industrial users, and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's VPDES permit or sludge use or disposal practices.
3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.
4. All POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise their local limits within one year of reissuance of VPDES permits for applicable treatment works, or within one year of VPDES permit modifications resulting in significant changes in VPDES permit limitations, POTW pretreatment operations, or POTW sludge disposal methods.
5. POTWs may develop Best Management Practices (BMPs) to implement subdivisions 1 and 2 of this subsection. Such BMPs shall be considered local limits and pretreatment standards for the purposes of this Part and § 307(d) of the Act.

D. Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection C of this section, such limits shall be deemed pretreatment standards for the purposes of § 307(d) of the CWA.

E. EPA and state enforcement actions under the law and § 309(f) of the CWA. If, within 30 days after notice of an interference or pass through violation has been sent by the director or EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the director or EPA may take appropriate enforcement action under the authority provided by the law and in § 309(f) of the CWA.

7112 9VAC25-31-780. National pretreatment standards: categorical standards.

7113 National pretreatment standards included in the regulations incorporated by reference in
7114 9VAC25-31-30, unless specifically noted otherwise, shall be in addition to all applicable
7115 pretreatment standards and requirements set forth in this part.

7116 A. Category determination request.

7117 1. Application deadline. Within 60 days after the effective date of a pretreatment standard
7118 for a subcategory under which an industrial user may be included, the industrial user or
7119 POTW may request that the Water Management Division Director or director, as
7120 appropriate, provide written certification on whether the industrial user falls within that
7121 particular subcategory. If an existing industrial user adds or changes a process or
7122 operation which may be included in a subcategory, the existing industrial user must
7123 request this certification prior to commencing discharge from the added or changed
7124 processes or operation. A new source must request this certification prior to commencing
7125 discharge. Where a certification is submitted by a POTW, the POTW shall notify any
7126 affected industrial user of such submission. The industrial user may provide written
7127 comments on the POTW submission to the Water Management Division Director or
7128 director, as appropriate, within 30 days of notification.

7129 2. Contents of application. Each request shall contain a statement:

- 7130** a. Describing which subcategories might be applicable; and
7131 b. Citing evidence and reasons why a particular subcategory is applicable and why
7132 others are not applicable. Any person signing the application statement submitted
7133 pursuant to this section shall make the following certification:

7134 "I certify under penalty of law that this document and all attachments were prepared
7135 under my direction or supervision in accordance with a system designed to assure that
7136 qualified personnel properly gather and evaluate the information submitted. Based on
7137 my inquiry of the person or persons who manage the system, or those persons directly
7138 responsible for gathering the information, the information submitted is, to the best of
7139 my knowledge and belief, true, accurate, and complete. I am aware that there are
7140 significant penalties for submitting false information, including the possibility of fine
7141 and imprisonment for knowing violations."

7142 3. Deficient requests. The Water Management Division Director or director will only act on
7143 written requests for determinations that contain all of the information required. Persons
7144 who have made incomplete submissions will be notified by the Water Management
7145 Division Director or director that their requests are deficient and, unless the time period is
7146 extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected
7147 within 30 days or within an extended period allowed by the Water Management Division
7148 Director or the director, the request for a determination shall be denied.

7149 4. Final decision.

7150 a. When the Water Management Division Director or director receives a submittal he
7151 will, after determining that it contains all of the information required by subdivision 2 of
7152 this subsection, consider the submission, any additional evidence that may have been
7153 requested, and any other available information relevant to the request. The Water
7154 Management Division Director or director will then make a written determination of the
7155 applicable subcategory and state the reasons for the determination.

7156 b. Where the request is submitted to the director, the director shall forward the
7157 determination described in this subdivision to the Water Management Division Director
7158 who may make a final determination. If the Water Management Division Director does
7159 not modify the director's decision within 60 days after receipt thereof, or if the Water

7160 Management Division Director waives receipt of the determination, the director's
7161 decision is final.

7162 c. Where the request is submitted by the industrial user or POTW to the Water
7163 Management Division Director or where the Water Management Division Director
7164 elects to modify the director's decision, the Water Management Division Director's
7165 decision will be final.

7166 d. The director shall send a copy of the determination to the affected industrial user
7167 and the POTW.

7168 5. Requests for public hearing or legal decision. Within 30 days following the date of
7169 receipt of notice of the final determination as provided for by subdivision A 4 d of this
7170 section, the requester may submit a petition to reconsider or contest the decision to the
7171 regional administrator who shall act on such petition expeditiously and state the reasons
7172 for his determination in writing.

7173 B. Deadline for compliance with categorical standards. Compliance by existing sources with
7174 categorical pretreatment standards shall be within three years of the date the standard is effective
7175 unless a shorter compliance time is specified in the regulations incorporated by reference in
7176 9VAC25-31-30. Direct dischargers with VPDES permits modified or reissued to provide a variance
7177 pursuant to § 301(i)(2) of the CWA shall be required to meet compliance dates set in any
7178 applicable categorical pretreatment standard. Existing sources which become industrial users
7179 subsequent to promulgation of an applicable categorical pretreatment standard shall be
7180 considered existing industrial users except where such sources meet the definition of a new
7181 source as defined in 9VAC25-31-10. New sources shall install and have in operating condition,
7182 and shall "start up" all pollution control equipment required to meet applicable pretreatment
7183 standards before beginning to discharge. Within the shortest feasible time (not to exceed 90
7184 days), new sources must meet all applicable pretreatment standards.

7185 C. 1. Concentration and mass limits pollutant discharge limits in categorical pretreatment
7186 standards will be expressed either as concentration or mass limits. Wherever possible, where
7187 concentration limits are specified in standards, equivalent mass limits will be provided so that
7188 local, state or federal authorities responsible for enforcement may use either concentration or
7189 mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process
7190 regulated by the standard, or as otherwise specified by the standard.

7191 2. When the limits in a categorical pretreatment standard are expressed only in terms of
7192 mass of pollutant per unit of production, the control authority may convert the limits to
7193 equivalent limitations expressed either as mass of pollutant discharged per day or effluent
7194 concentration for purposes of calculating effluent limitations applicable to individual
7195 industrial users.

7196 3. A control authority calculating equivalent mass-per-day limitations under subdivision 2
7197 of this subsection shall calculate such limitations by multiplying the limits in the standard
7198 by the industrial user's average rate of production. This average rate of production shall
7199 be based not upon the designed production capacity but rather upon a reasonable
7200 measure of the industrial user's actual long-term daily production, such as the average
7201 daily production during a representative year. For new sources, actual production shall be
7202 estimated using projected production.

7203 4. A control authority calculating equivalent concentration limitations under subdivision 2
7204 of this subsection shall calculate such limitations by dividing the mass limitations derived
7205 under subdivision 3 of this subsection by the average daily flow rate of the industrial user's
7206 regulated process wastewater. This average daily flow rate shall be based upon a
7207 reasonable measure of the industrial user's actual long-term average flow rate, such as
7208 the average daily flow rate during the representative year.

5. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all the following conditions in subdivisions 5 a (1) through (5) of this subsection as follows.

a. To be eligible for equivalent mass limits, the industrial user must:

(1) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(2) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

(3) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(4) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(5) Have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

b. An industrial user subject to equivalent mass limits must:

(1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(2) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(3) Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20% from its baseline production rates determined in subdivision 5 a (3) of this subsection. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(4) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subdivision 5 a (1) of this subsection so long as it discharges under an equivalent mass limit.

c. A control authority that chooses to establish equivalent mass limits:

(1) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(2) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(3) May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual

average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to subdivision 5 d of this subsection. The industrial user must also be in compliance with 9VAC25-31-890 (regarding the prohibition of bypass).

d. The control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

6. The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions: when converting such limits to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by subsection D of this section.

7. Equivalent limitations calculated in accordance with subdivisions 3 4, 5 and 6 of this subsection are deemed pretreatment standards for the purposes of § 307(d) of the CWA and this part. The control authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the individual user must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

8. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

9. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

D. Dilution prohibited as substitute for treatment. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

E. Combined wastestream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority, or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standard or standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits

or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

1. Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

a. Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where:

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream i .

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; (ii) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (iii) any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403):

(1) The pollutants of concern are not detectable in the effluent from the industrial user;

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or

(4) The wastestream contains only pollutants which are compatible with the POTW.

F_T = The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

b. Alternative mass limit.

$$M_T = \left(\sum_{i=1}^N M_i \right) \left(\frac{F_T - F_D}{\sum_{i=1}^N F_i} \right)$$

where:

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; (ii) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (iii) any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons (see Appendix D of 40 CFR Part 403):

(1) The pollutants of concern are not detectable in the effluent from the industrial user;

(2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or

(4) The wastestream contains only pollutants which are compatible with the POTW.

F_T = The average flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

2. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

3. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of 9VAC25-31-840 G.

4. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control

authority shall ensure that any change in an industrial user's monitoring point or points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

9VAC25-31-790. Removal credits.

A. General.

1. Definitions for the purpose of this section:

"Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

"Sludge requirements" means the following statutory provisions and regulations or permits issued thereunder (or more stringent Virginia or local regulations): § 405 of the CWA; the Solid Waste Disposal Act (SWDA) (42 USC § 6901 et seq.) (including Title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) (42 USC § 6901 et seq.) and Virginia regulations contained in any Virginia sludge management plan prepared pursuant to Subtitle D of SWDA); the Clean Air Act (42 USC § 4701 et seq.); the Toxic Substances Control Act (15 USC § 2601 et seq.); and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

2. General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standards applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with subdivision 4 of this subsection. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment statement so specifies.

3. Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met;

a. Application. The POTW applies for, and receives, authorization from the director to give a removal credit in accordance with the requirements and procedures specified in subsection E of this section;

b. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection B of this section;

c. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this part; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection D of this section;

d. Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply is required to meet its categorical pretreatment standards as

7438 modified by the removal credit. If granting removal credits forces a POTW to incur
7439 greater sludge management costs than would be incurred in the absence of granting
7440 removal costs, the additional sludge management costs will not be eligible for EPA
7441 grant assistance. Removal credits may be made available for the following pollutants:
7442 (1) For any pollutant listed in Appendix G-I of the regulation incorporated by reference
7443 in 9VAC25-31-750 for the use or disposal practice employed by the POTW, when the
7444 requirements of Part VI of this chapter for that practice are met;
7445 (2) For any pollutant listed in Appendix G-II of the regulation incorporated by reference
7446 in 9VAC25-31-750 for the use or disposal practice employed by the POTW when the
7447 concentration for a pollutant listed in Appendix G-II of the regulation incorporated by
7448 reference in 9VAC25-31-750 in the sewage sludge that is used or disposed does not
7449 exceed the concentration for the pollutant in Appendix G-II of the regulation
7450 incorporated by reference in 9VAC25-31-750; and
7451 (3) For any pollutant in sewage sludge when the POTW disposes all of its sewage
7452 sludge in a municipal solid waste landfill that meets the criteria in the Code of Virginia
7453 and the Solid Waste Management Regulations, 9VAC20-81;
7454 e. VPDES permit limitations. The granting of removal credits will not cause a violation
7455 of the POTW's permit limitations or conditions. Alternatively, the POTW can
7456 demonstrate to the director that even though it is not presently in compliance with
7457 applicable limitations and conditions in its VPDES permit, it will be in compliance when
7458 the industrial user or users to whom the removal credit would apply is required to meet
7459 its categorical pretreatment standard or standards, as modified by the removal credit
7460 provision.
7461 4. Calculation of revised discharge limits. Revised discharge limits for a specific pollutant
7462 shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

7463 where:
7464 x = pollutant discharge limit specified in the applicable categorical pretreatment
7465 standard
7466 r = removal credit for that pollutant as established under subsection B of this section
7467 (percentage removal expressed as a proportion, i.e., a number between 0 and 1)
7468 y = revised discharge limit for the specified pollutant (expressed in same units as x)

7469 B. Establishment of removal credits; demonstration of consistent removal.

7470 1. Definition of "consistent removal." "Consistent removal" means the average of the
7471 lowest 50% of the removal measured according to subdivision 2 of this subsection. All
7472 sample data obtained for the measured pollutant during the time period prescribed in
7473 subdivision 2 of this subsection must be reported and used in computing consistent
7474 removal. If a substance is measurable in the influent but not in the effluent, the effluent
7475 level may be assumed to be the limit of measurement, and those data may be used by
7476 the POTW at its discretion and subject to approval by the director. If the substance is not
7477 measurable in the influent, the data may not be used. Where the number of samples with
7478 concentrations equal to or above the limit of measurement is between eight and 12, the
7479 average of the lowest six removals shall be used. If there are less than eight samples with
7480 concentrations equal to or above the limit of measurement, the director may approve
7481 alternate means for demonstrating consistent removal. The term "measurement" refers to

the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

2. Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information, as provided for in subdivision 1 of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data; seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed;

b. Representative data; quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in subdivision 1 of this subsection;

c. Sampling procedures: composite.

(1) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(2)(a) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(b) In addition, upon the director's concurrence, a POTW may utilize an historical data base amassed prior to July 24, 1996, provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(3) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample or samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period

7531 because of biological, chemical or physical interactions which take place after sample
7532 collection and affect the results. A grab sample is an individual sample collected over
7533 a period of time not exceeding 15 minutes;

7534 e. Analytical methods. The sampling referred to in subdivisions 2 a through d of this
7535 subsection and an analysis of these samples shall be performed in accordance with
7536 the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40
7537 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in
7538 question, or where the administrator determines that the Part 136 sampling and
7539 analytical techniques are inappropriate for the pollutant in question, sampling and
7540 analysis shall be performed using validated analytical methods or any other applicable
7541 sampling and analytical procedures, including procedures suggested by the POTW or
7542 other parties, approved by the administrator; and

7543 f. Calculation of removal. All data acquired under the provisions of this section must
7544 be submitted to the department. Removal for a specific pollutant shall be determined
7545 either, for each sample, by measuring the difference between the concentrations of
7546 the pollutant in the influent and effluent of the POTW and expressing the difference as
7547 a percentage of the influent concentration, or, where such data cannot be obtained,
7548 removal may be demonstrated using other data or procedures subject to concurrence
7549 by the director as provided for in subdivision 1 of this subsection.

7550 C. Provisional credits. For pollutants which are not being discharged currently (i.e., new or
7551 modified facilities, or production changes) the POTW may apply for authorization to give removal
7552 credits prior to the initial discharge of the pollutant. Consistent removal shall be based
7553 provisionally on data from treatability studies or demonstrated removal at other treatment facilities
7554 where the quality and quantity of influent are similar. Within 18 months after the commencement
7555 of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the
7556 requirements of subsection B of this section. If, within 18 months after the commencement of the
7557 discharge of the pollutant in question, the POTW cannot demonstrate consistent removal
7558 pursuant to the requirements of subsection B of this section, the authority to grant provisional
7559 removal credits shall be terminated by the director and all industrial users to whom the revised
7560 discharge limits had been applied shall achieve compliance with the applicable categorical
7561 pretreatment standards within a reasonable time, not to exceed the period of time prescribed in
7562 the applicable categorical pretreatment standards, as may be specified by the director.

7563 D. Exception to POTW pretreatment program requirement. A POTW required to develop a
7564 local pretreatment program by 9VAC25-31-800 may conditionally give removal credits pending
7565 approval of such a program in accordance with the following terms and conditions:

7566 1. All industrial users who are currently subject to a categorical pretreatment standard and
7567 who wish conditionally to receive a removal credit must submit to the POTW the
7568 information required in 9VAC25-31-840 B 1 through 7 (except new or modified industrial
7569 users must only submit the information required by 9VAC25-31-840 B 1 through 6),
7570 pertaining to the categorical pretreatment standard as modified by the removal credit. The
7571 industrial users shall indicate what additional technology, if any, will be needed to comply
7572 with the categorical pretreatment standard or standards as modified by the removal credit;

7573 2. The POTW must have submitted to the department an application for pretreatment
7574 program approval meeting the requirements of 9VAC25-31-800 and 9VAC25-31-810 in a
7575 timely manner, not to exceed the time limitation set forth in a compliance schedule for
7576 development of a pretreatment program included in the POTW's VPDES permit, but in no
7577 case later than July 1, 1983, where no permit deadline exists;

7578 3. The POTW must:

7579 a. Compile and submit data demonstrating its consistent removal in accordance with
7580 subsection B of this section;

7581 b. Comply with the conditions specified in subdivision A 3 of this section; and

7582 c. Submit a complete application for removal credit authority in accordance with
7583 subsection E of this section;

7584 4. If a POTW receives authority to grant conditional removal credits and the director
7585 subsequently makes a final determination, after appropriate notice, that the POTW failed
7586 to comply with the conditions in subdivisions 2 and 3 of this subsection, the authority to
7587 grant conditional removal credits shall be terminated by the director and all industrial users
7588 to whom the revised discharge limits had been applied shall achieve compliance with the
7589 applicable categorical pretreatment standards within a reasonable time, not to exceed the
7590 period of time prescribed in the applicable categorical pretreatment standards, as may be
7591 specified by the director;

7592 5. If a POTW grants conditional removal credits and the POTW or the director
7593 subsequently makes a final determination, after appropriate notice, that the industrial user
7594 or users failed to comply with the conditions in subdivision 1 of this subsection, the
7595 conditional credit shall be terminated by the POTW or the director for the noncomplying
7596 industrial user or users and the industrial user or users to whom the revised discharge
7597 limits had been applied shall achieve compliance with the applicable categorical
7598 pretreatment standards within a reasonable time, not to exceed the period of time
7599 prescribed in the applicable categorical pretreatment standards, as may be specified by
7600 the director. The conditional credit shall not be terminated where a violation of the
7601 provisions of this paragraph results from causes entirely outside of the control of the
7602 industrial user or users or the industrial user or users had demonstrated subsequential
7603 compliance; and

7604 6. The director may elect not to review an application for conditional removal credit
7605 authority upon receipt of such application, in which case the conditionally revised
7606 discharge limits will remain in effect until reviewed by the director. This review may occur
7607 at any time in accordance with the procedures of 9VAC25-31-830, but in no event later
7608 than the time of any pretreatment program approval or any VPDES permit reissuance
7609 thereunder.

7610 E. POTW application for authorization to give removal credits and director review.

7611 1. Who must apply. Any POTW that wants to give a removal credit must apply for
7612 authorization from the director.

7613 2. To whom application is made. An application for authorization to give removal credits
7614 (or modify existing ones) shall be submitted by the POTW to the department.

7615 3. When to apply. A POTW may apply for authorization to give or modify removal credits
7616 at any time.

7617 4. Contents of the application. An application for authorization to give removal credits must
7618 be supported by the following information:

7619 a. List of pollutants. A list of pollutants for which removal credits are proposed;

7620 b. Consistent removal data. The data required pursuant to subsection B of this section;

7621 c. Calculation of revised discharge limits. Proposed revised discharge limits for each
7622 affected subcategory of industrial users calculated in accordance with subdivision A 4
7623 of this section;

d. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection D of this section;

e. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subdivision A 3 d of this section; and

f. VPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's VPDES permit limits and conditions as required in subdivision A 3 e of this section.

5. Director review. The director shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of 9VAC25-31-830 and shall, in no event, have more than 180 days from public notice of an application to complete review.

6. Nothing in this part precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

F. Continuation and withdrawal of authorization.

1. Effect of authorization. Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in subdivision A 3 d of this section or its VPDES permit limits and conditions as required by subdivision A 3 e of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one or more industrial users that initially were not granted removal credits, it must notify the department.

2. Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's VPDES permit as soon as possible and shall become an enforceable requirement of the POTW's VPDES permit. The removal credits will remain in effect for the term of the POTW's VPDES permit, provided the POTW maintains compliance with the conditions specified in subdivision 4 of this subsection.

3. Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the director, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

4. Modification or withdrawal of removal credits.

a. Notice of POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to subdivision 3 of this subsection or other relevant information available to it, the director determines:

(1) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(2) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's VPDES Permit.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the

appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a public hearing. Following such notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical pretreatment standards) as may be specified by the director.

G. Removal credits in state-run pretreatment programs. Where the director elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of subdivision A 3 of this section.

H. Compensation for overflow. For the purpose of this section, "overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subdivision 1 or 2 of this subsection. However, this subsection shall not apply where industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant:

1. The industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the department evidence that:

- a. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

- b. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in subdivision 1 c of this subsection, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

- c. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, the director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or

7720 otherwise ceased, as appropriate, during all circumstances in which an overflow event
 7721 was reasonably expected to occur; or
 7722 2. a. The consistent removal claimed is reduced pursuant to the following equation:

$$r_c = \frac{r_m 8760 - z}{8760}$$

7723 where:

7724 r_m = POTW's consistent removal rate for that pollutant as established under
 7725 subsections A 1 and B 2 of this section

7726 r_c = removal corrected by the overflow factor

7727 Z = hours per year that overflow occurred between the industrial user or users and the
 7728 POTW treatment plant, the hours either to be shown in the POTW's current VPDES
 7729 permit application or the hours, as demonstrated by verifiable techniques, that a
 7730 particular industrial user's discharge overflows between the industrial user and the
 7731 POTW treatment plant.

7732 b. The POTW is complying with all VPDES permit requirements and any additional
 7733 requirements in any order or decree, issued pursuant to the Clean Water Act affecting
 7734 combined sewer outflows. These requirements include, but are not limited to, any
 7735 combined sewer overflow requirements that conform to the Combined Sewer Overflow
 7736 Control Policy.

7737 **9VAC25-31-800. Pretreatment program requirements: development and implementation by**
 7738 **POTW.**

7739 A. POTWs required to develop a pretreatment program. Any POTW (or combination of
 7740 POTWs operated by the same authority) with a total design flow greater than five million gallons
 7741 per day (mgd) and receiving from industrial users pollutants which pass through or interfere with
 7742 the operation of the POTW or are otherwise subject to pretreatment standards will be required to
 7743 establish a POTW pretreatment program unless the director exercises his or her option to assume
 7744 local responsibilities. The regional administrator or director may require that a POTW with a
 7745 design flow of five mgd or less develop a POTW pretreatment program if he finds that the nature
 7746 or volume of the industrial influent, treatment process upsets, violations of POTW effluent
 7747 limitations, contamination of municipal sludge, violations of water quality standards, or other
 7748 circumstances warrant in order to prevent interference with the POTW or pass through.

7749 B. Deadline for program approval. POTWs identified as being required to develop a POTW
 7750 pretreatment program under subsection A of this section shall develop and submit such a program
 7751 for approval as soon as possible, but in no case later than one year after written notification from
 7752 the director of such identification. The approved program shall be in operation within two years of
 7753 the effective date of the permit. The POTW pretreatment program shall meet the criteria set forth
 7754 in subsection F of this section and shall be administered by the POTW to ensure compliance by
 7755 industrial users with applicable pretreatment standards and requirements.

7756 C. Incorporation of approved programs in permits. A POTW may develop an appropriate
 7757 POTW pretreatment program any time before the time limit set forth in subsection B of this section.
 7758 The POTW's VPDES permit will be reissued or modified to incorporate the approved program as
 7759 enforceable conditions of the permit. The modification of a POTW's VPDES permit for the
 7760 purposes of incorporating a POTW pretreatment program approved in accordance with the
 7761 procedures in 9VAC25-31-830 shall be deemed a minor permit modification subject to the
 7762 procedures in 9VAC25-31-400.

7763 D. Incorporation of compliance schedules in permits. (Reserved.)

E. Cause for revocation and reissuance or modification of permits. Under the authority of the law and § 402 (b)(1)(C) of the CWA, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;
2. Coordinate the issuance of § 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;
3. Incorporate a modification of the permit approved under § 301(h) or § 301(i) of the CWA;
4. Incorporate an approved POTW pretreatment program in the POTW permit;
5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or
6. Incorporate the removal credits (established under 9VAC25-31-790) in the POTW permit.

F. POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a ~~statute or ordinance~~ statute, ordinance, or series of contracts or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit.

b. Require compliance with applicable pretreatment standards and requirements by industrial users.

c. Control through permit, or order the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under 9VAC25-31-10, this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user except as follows:

(1)(a) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the POTW, be more appropriately controlled under a general control mechanism than under individual control mechanisms.

(b) To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information,

7810 production processes, the types of wastes generated, the location for monitoring all
7811 wastes covered by the general control mechanism, any requests in accordance with
7812 9VAC25-31-840 E 2 for a monitoring waiver for a pollutant neither present nor
7813 expected to be present in the discharge, and any other information the POTW deems
7814 appropriate. A monitoring waiver for a pollutant neither present nor expected to be
7815 present in the discharge is not effective in the general control mechanism until after
7816 the POTW has provided written notice to the significant industrial user that such a
7817 waiver request has been granted in accordance with 9VAC25-31-840 E 2. The POTW
7818 must retain a copy of the general control mechanism, documentation to support the
7819 POTW's determination that a specific significant industrial user meets the criteria in
7820 subdivisions 1 c (1) (a) (i) through (v) of this subsection, and a copy of the user's written
7821 request for coverage for three years after the expiration of the general control
7822 mechanism. A POTW may not control a significant industrial user through a general
7823 control mechanism where the facility is subject to production-based categorical
7824 pretreatment standards or categorical pretreatment standards expressed as mass of
7825 pollutant discharged per day or for industrial users whose limits are based on the
7826 Combined Wastestream Formula or Net/Gross calculations (9VAC25-31-780 E and
7827 9VAC25-31-870).

7828 (2) Both individual and general control mechanisms must be enforceable and contain,
7829 at a minimum, the following conditions:

7830 (a) Statement of duration (in no case more than five years);

7831 (b) Statement of nontransferability without, at a minimum, prior notification to the
7832 POTW and provision of a copy of the existing control mechanism to the new owner or
7833 operator;

7834 (c) Effluent limits, including Best Management Practices, based on applicable general
7835 pretreatment standards in this part, categorical pretreatment standards, local limits,
7836 and the law;

7837 (d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements,
7838 including an identification of the pollutants to be monitored (including the process for
7839 seeking a waiver for a pollutant neither present nor expected to be present in the
7840 discharge in accordance with 9VAC25-31-840 E 2, or a specific waiver pollutant in the
7841 case of an individual control mechanism), sampling location, sampling frequency, and
7842 sample type, based on the applicable general pretreatment standards in this part,
7843 categorical pretreatment standards, local limits, and the law;

7844 (e) Statement of applicable civil and criminal penalties for violation of pretreatment
7845 standards and requirements; and any applicable compliance schedules, which may
7846 not extend beyond applicable federal deadlines.

7847 (f) Requirements to control slug discharges, if determined by the POTW to be
7848 necessary.

7849 d. Require:

7850 (1) The development of a compliance schedule by each industrial user for the
7851 installation of technology required to meet applicable pretreatment standards and
7852 requirements; and

7853 (2) The submission of all notices and self-monitoring reports from industrial users as
7854 are necessary to assess and ensure compliance by industrial users with pretreatment
7855 standards and requirements, including but not limited to the reports required in
7856 9VAC25-31-840.

7857 e. Carry out all inspection, surveillance and monitoring procedures necessary to
7858 determine, independent of information supplied by industrial users, compliance or
7859 noncompliance with applicable pretreatment standards and requirements by industrial
7860 users. Representatives of the POTW shall be authorized to enter any premises of any
7861 industrial user in which a discharge source or treatment system is located or in which
7862 records are required to be kept under 9VAC25-31-840 O to ensure compliance with
7863 pretreatment standards. Such authority shall be at least as extensive as the authority
7864 provided under § 308 of the CWA.

7865 f. Obtain remedies for noncompliance by any industrial user with any pretreatment
7866 standard and requirement. All POTWs shall be able to seek injunctive relief for
7867 noncompliance by industrial users with pretreatment standards and requirements. All
7868 POTWs shall also have authority to seek or assess civil or criminal penalties in at least
7869 the amount of \$1,000 a day for each violation by industrial users of pretreatment
7870 standards and requirements.

7871 Pretreatment requirements which will be enforced through the remedies set forth in
7872 this subdivision, will include but not be limited to, the duty to allow or carry out
7873 inspections, entry, or monitoring activities; any rules, regulations, or orders issued by
7874 the POTW; any requirements set forth in individual control mechanisms issued by the
7875 POTW; or any reporting requirements imposed by the POTW or this part. The POTW
7876 shall have authority and procedures (after informal notice to the discharger) to
7877 immediately and effectively halt or prevent any discharge of pollutants to the POTW
7878 which reasonably appears to present an imminent endangerment to the health or
7879 welfare of persons. The POTW shall also have authority and procedures (which shall
7880 include notice to the affected industrial users and an opportunity to respond) to halt or
7881 prevent any discharge to the POTW which presents or may present an endangerment
7882 to the environment or which threatens to interfere with the operation of the POTW. The
7883 director shall have authority to seek judicial relief and may also use administrative
7884 penalty authority when the POTW has sought a monetary penalty which the director
7885 believes to be insufficient.

7886 g. Comply with the confidentiality requirements set forth in 9VAC25-31-860.

7887 2. Procedures. The POTW shall develop and implement procedures to ensure compliance
7888 with the requirements of a pretreatment program. At a minimum, these procedures shall
7889 enable the POTW to:

7890 a. Identify and locate all possible industrial users which might be subject to the POTW
7891 pretreatment program. Any compilation, index or inventory of industrial users made
7892 under this subdivision shall be made available to the regional administrator or
7893 department upon request.

7894 b. Identify the character and volume of pollutants contributed to the POTW by the
7895 industrial users identified under subdivision 2 a of this subsection. This information
7896 shall be made available to the regional administrator or department upon request.

7897 c. Notify industrial users identified under subdivision 2 a of this subsection, of
7898 applicable pretreatment standards and any applicable requirements under §§ 204(b)
7899 and 405 of the CWA and subtitles C and D of the Resource Conservation and
7900 Recovery Act (42 USC § 6901 et seq.). Within 30 days of approval pursuant to
7901 9VAC25-31-800 F 6, of a list of significant industrial users, notify each significant
7902 industrial user of its status as such and of all requirements applicable to it as a result
7903 of such status.

7904 d. Receive and analyze self-monitoring reports and other notices submitted by
7905 industrial users in accordance with the self-monitoring requirements in 9VAC25-31-
7906 840.

7907 e. Randomly sample and analyze the effluent from industrial users and conduct
7908 surveillance activities in order to identify, independent of information supplied by
7909 industrial users, occasional and continuing noncompliance with pretreatment
7910 standards. Inspect and sample the effluent from each significant industrial user at least
7911 once a year except as otherwise specified below.

7912 (1) Where the POTW has authorized the industrial user subject to a categorical
7913 pretreatment standard to forego sampling of a pollutant regulated by a categorical
7914 pretreatment standard in accordance with 9VAC25-31-840 E the POTW must sample
7915 for the waived pollutant(s) at least once during the term of the categorical industrial
7916 user's control mechanism. In the event that the POTW subsequently determines that
7917 a waived pollutant is present or is expected to be present in the industrial user's
7918 wastewater based on changes that occur in the user's operations, the POTW must
7919 immediately begin at least annual effluent monitoring of the user's discharge and
7920 inspection.

7921 (2) Where the POTW has determined that an industrial user meets the criteria for
7922 classification as a nonsignificant categorical industrial user, the POTW must evaluate,
7923 at least once per year, whether an industrial user continues to meet the criteria in
7924 9VAC25-31-10.

7925 (3) In the case of industrial users subject to reduced reporting requirements under
7926 9VAC25-31-840 E, the POTW must randomly sample and analyze the effluent from
7927 industrial users and conduct inspections at least once every two years. If the industrial
7928 user no longer meets the conditions for reduced reporting in 9VAC25-31-840 E, the
7929 POTW must immediately begin sampling and inspecting the industrial user at least
7930 once a year.

7931 f. Evaluate whether each such significant industrial user needs a plan or other action
7932 to control slug discharges. For industrial users identified as significant prior to
7933 November 14, 2005, this evaluation must have been conducted at least once by
7934 October 14, 2005; additional significant industrial users must be evaluated within one
7935 year of being designated a significant industrial user. For purposes of this subsection,
7936 a slug discharge is any discharge of a nonroutine, episodic nature, including but not
7937 limited to an accidental spill or noncustomary batch discharge that has a reasonable
7938 potential to cause interference or pass through, or in any other way violate the POTWs
7939 regulating local limits or permit conditions. The results of such activities shall be
7940 available to the department upon request. Significant industrial users are required to
7941 notify the POTW immediately of any changes at its facility affecting potential for a slug
7942 discharge. If the POTW decides that a slug control plan is needed, the plan shall
7943 contain, at a minimum, the following elements:

7944 (1) Description of discharge practices, including nonroutine batch discharges;
7945 (2) Description of stored chemicals;
7946 (3) Procedures for immediately notifying the POTW of slug discharges, including any
7947 discharge that would violate a prohibition under 9VAC25-31-770 B, with procedures
7948 for follow-up written notification within five days; and
7949 (4) If necessary, procedures to prevent adverse impact from accidental spills, including
7950 inspection and maintenance of storage areas, handling and transfer of materials,
7951 loading and unloading operations, control of plant site run-off, worker training, building
7952 of containment structures or equipment, measures for containing toxic organic

7953 pollutants (including solvents), and measures and equipment necessary for
7954 emergency response.

7955 g. Investigate instances of noncompliance with pretreatment standards and
7956 requirements, as indicated in the reports and notices required under 9VAC25-31-840,
7957 or indicated by analysis, inspection, and surveillance activities described in subdivision
7958 2 e of this subsection. Sample taking and analysis and the collection of other
7959 information shall be performed with sufficient care to produce evidence admissible in
7960 enforcement proceedings or in judicial actions.

7961 h. Comply with the public participation requirements of the Code of Virginia and 40
7962 CFR Part 25 in the enforcement of national pretreatment standards. These procedures
7963 shall include provisions for at least annual public notification, in a newspaper of general
7964 circulation that provides meaningful public notice within the jurisdiction(s) served by
7965 the POTW of industrial users which, at any time during the previous 12 months were
7966 in significant noncompliance with applicable pretreatment requirements. For the
7967 purposes of this provision, a significant industrial user (or any industrial user that
7968 violates subdivision 2 h (3), (4) or (8) of this subsection is in significant noncompliance
7969 if its violation meets one or more of the following criteria:

7970 (1) Chronic violations of wastewater discharge limits, defined here as those in which
7971 66% or more of all of the measurements taken during a six-month period exceed (by
7972 any magnitude) a numeric pretreatment standard or requirement, including
7973 instantaneous limits, as defined by 9VAC25-31-10;

7974 (2) Technical Review Criteria (TRC) violations, defined here as those in which 33% or
7975 more of all of the measurements for each pollutant parameter taken during a six-month
7976 period equal or exceed the product of the numeric pretreatment standard or
7977 requirement, including instantaneous limits, as defined by 9VAC25-31-10; multiplied
7978 by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all
7979 other pollutants except pH);

7980 (3) Any other violation of a pretreatment standard or requirement as defined by
7981 9VAC25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative
7982 standard) that the control authority POTW determines has caused, alone or in
7983 combination with other discharges, interference or pass through (including
7984 endangering the health of POTW personnel or the general public);

7985 (4) Any discharge of a pollutant that has caused imminent endangerment to human
7986 health, welfare or to the environment or has resulted in the POTW's exercise of its
7987 emergency authority under subdivision 1 f of this subsection to halt or prevent such a
7988 discharge;

7989 (5) Failure to meet, within 90 days after the schedule date, a compliance schedule
7990 milestone contained in a local control mechanism or enforcement order for starting
7991 construction, completing construction, or attaining final compliance;

7992 (6) Failure to provide, within 45 days after the due date, required reports such as
7993 baseline monitoring reports, 90-day compliance reports, periodic self-monitoring
7994 reports, and reports on compliance with compliance schedules;

7995 (7) Failure to accurately report noncompliance; or

7996 (8) Any other violation or group of violations that may include a violation of Best
7997 Management Practices which the POTW determines will adversely affect the operation
7998 or implementation of the local pretreatment program.

7999 3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out
8000 the authorities and procedures described in subdivisions 1 and 2 of this subsection. In

some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section, and (ii) a limited aspect of the program does not need to be implemented immediately (see 9VAC25-31-810 B).

4. Local limits. The POTW shall develop local limits as required in 9VAC25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- a. Describe how the POTW will investigate instances of noncompliance;
- b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- c. Identify (by title) the official or officials responsible for each type of response; and
- d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subdivisions 1 and 2 of this subsection.

6. The POTW shall prepare and maintain a list of its significant industrial users. The list shall identify the criteria in the definition of significant industrial user in Part I (9VAC25-31-10 et seq.) of this chapter which are applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to subdivision 3 of that definition that such industrial user should not be considered a significant industrial user. This list shall be submitted to the department pursuant to 9VAC25-31-810 as a nonsubstantial program modification pursuant to 9VAC25-31-900 D. Modifications to the list shall be submitted to the department pursuant to 9VAC25-31-840 I 1.

G. A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (electronic reporting).

9VAC25-31-810. POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.

A. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in subdivisions B 1 through B 4 of this section. This description shall be submitted to the department which will make a determination on the request for program approval in accordance with the procedures described in 9VAC25-31-830.

B. The program description must contain the following information:

1. A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in 9VAC25-31-800. This statement shall:

- a. Identify the provision of the legal authority under 9VAC25-31-800 F 1 which provides the basis for each procedure under 9VAC25-31-800 F 2;
- b. Identify the manner in which the POTW will implement the program requirements set forth in 9VAC25-31-800, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and

8046 c. Identify how the POTW intends to ensure compliance with pretreatment standards
8047 and requirements, and to enforce them in the event of noncompliance by industrial
8048 users;

8049 2. A copy of any statutes, ordinances, regulations, agreements, or other authorities relied
8050 upon by the POTW for its administration of the program which meet the requirements of
8051 9VAC25-31-800 F 1. This submission shall include a statement reflecting the endorsement
8052 or approval of the local boards or bodies responsible for supervising or funding the POTW
8053 pretreatment program if approved;

8054 3. A brief description (including organization charts) of the POTW organization which will
8055 administer the pretreatment program. If more than one agency is responsible for
8056 administration of the program the responsible agencies shall be identified, their respective
8057 responsibilities delineated, and their procedures for coordination set forth in an inter-
8058 jurisdictional agreement; and

8059 4. A description of the funding levels and full and part-time manpower available to
8060 implement the program.

8061 C. The POTW may request conditional approval of the pretreatment program pending the
8062 acquisition of funding and personnel from certain elements of the program. The request for
8063 conditional approval must meet the requirements set forth in subsection B of this section except
8064 that the requirements of subsection B of this section may be relaxed if the submission
8065 demonstrates that:

8066 1. A limited aspect of the program does not need to be implemented immediately;

8067 2. The POTW had adequate legal authority and procedures to carry out those aspects of
8068 the program which will not be implemented immediately; and

8069 3. Funding and personnel for the program aspects to be implemented at a later date will
8070 be available when needed. The POTW will describe in the submission the mechanism by
8071 which this funding will be acquired. Upon receipt of a request for conditional approval, the
8072 director will establish a fixed date for the acquisition of the needed funding and personnel.
8073 If funding is not acquired by this date, the conditional approval of the POTW pretreatment
8074 program and any removal allowances granted to the POTW may be modified or
8075 withdrawn.

8076 D. The request for authority to revise categorical pretreatment standards must contain the
8077 information required in 9VAC25-31-790 D.

8078 E. Any POTW requesting POTW pretreatment program approval shall submit to the
8079 department three copies of the submission described in subsection B, and if appropriate,
8080 subsection D of this section. Within 60 days after receiving the submission, the director shall make
8081 a preliminary determination of whether the submission meets the requirements of subsection B
8082 and, if appropriate, subsection D of this section. If the director makes the preliminary
8083 determination that the submission meets these requirements, the director shall:

8084 1. Notify the POTW that the submission has been received and is under review; and

8085 2. Commence the public notice and evaluation activities set forth in 9VAC25-31-830.

8086 F. If, after review of the submission as provided for in subsection E of this section, the director
8087 determines that the submission does not comply with the requirements of subsections B or C of
8088 this section, and, if appropriate, subsection D, of this section, the director shall provide notice in
8089 writing to the applying POTW and each person who has requested individual notice. This
8090 notification shall identify any defects in the submission and advise the POTW and each person
8091 who has requested individual notice of the means by which the POTW can comply with the
8092 applicable requirements of subsections B, C of this section, and, if appropriate, subsection D of
8093 this section.

8094 G. Consistency with water quality management plans.

8095 1. In order to be approved the POTW pretreatment program shall be consistent with any

8096 approved water quality management plan developed in accordance with 40 CFR Parts

8097 130 and 131, as revised, where such 208 plan includes management agency designations

8098 and addresses pretreatment in a manner consistent with this part. In order to assure such

8099 consistency the director shall solicit the review and comment of the appropriate 208

8100 planning agency during the public comment period provided for in 9VAC25-31-830 B 1 b

8101 prior to approval or disapproval of the program.

8102 2. Where no 208 plan has been approved or where a plan has been approved but lacks

8103 management agency designations or does not address pretreatment in a manner

8104 consistent with this part, the director shall nevertheless solicit the review and comment of

8105 the appropriate 208 planning agency.

8106 **9VAC25-31-820. [Reserved]**

8107 **9VAC25-31-830. Approval procedures for POTW pretreatment programs and POTW**

8108 **granting of removal credits.**

8109 The following procedures shall be adopted in approving or denying requests for approval of

8110 POTW pretreatment programs and applications for removal credit authorization:

8111 A. The director shall have 90 days from the date of public notice of any submission complying

8112 with the requirements of 9VAC25-31-810 B and, where removal credit authorization is sought with

8113 9VAC25-31-790 E and 9VAC25-31-810 D, to review the submission. The director shall review the

8114 submission to determine compliance with the requirements of 9VAC25-31-800 B and F, and,

8115 where removal credit authorization is sought, with 9VAC25-31-790. The director may have up to

8116 an additional 90 days to complete the evaluation of the submission if the public comment period

8117 provided for in subdivision B 1 b of this section is extended beyond 30 days or if a public hearing

8118 is held as provided for in subdivision B 2 of this section. In no event, however, shall the time for

8119 evaluation of the submission exceed a total of 180 days from the date of public notice of a

8120 submission meeting the requirements of 9VAC25-31-810 B and, in the case of a removal credit

8121 application, 9VAC25-31-790 E and 9VAC25-31-810 B.

8122 B. Upon receipt of a submission, the director shall commence its review. Within 20 work days

8123 after making a determination that a submission meets the requirements of 9VAC25-31-810 B and,

8124 where removal allowance approval is sought, 9VAC25-31-790 D and 9VAC25-31-810 D, the

8125 director shall:

8126 1. Issue a public notice of request for approval of the submission.

8127 a. This public notice shall be circulated in a manner designed to inform interested and

8128 potentially interested persons of the submission. Procedures for the circulation of

8129 public notice shall include:

8130 (1) Mailing, by electronic or postal delivery, notices of the request for approval of the

8131 submission to designated CWA § 208 planning agencies, federal and state fish,

8132 shellfish, and wildlife resource agencies (unless such agencies have asked not to be

8133 sent the notices); and to any other person or group who has requested individual

8134 notice, including those on appropriate mailing lists; and

8135 (2) Publication of a notice of request for approval of the submission in a newspaper(s)

8136 of general circulation within the jurisdiction(s) served by the POTW that provides

8137 meaningful public notice.

8138 b. The public notice shall provide a period of not less than 30 days following the date

8139 of the public notice during which time interested persons may submit their written views

8140 on the submission.

c. All written comments submitted during the 30-day comment period shall be retained by the director and considered in the decision on whether or not to approve the submission. The period for comment may be extended at the discretion of the director.

2. Provide an opportunity for the applicant, any affected state, any interested state or federal agency, person or group of persons to request a public hearing with respect to the submission.

a. This request for public hearing shall be filed within the 30-day (or extended) comment period described in subdivision 1 b of this subsection and shall indicate the interest of the person filing such request and the reasons why a public hearing is warranted.

b. The director shall hold a public hearing if the POTW so requests. In addition, a public hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the public hearing.

c. Public notice of a public hearing to consider a submission and sufficient to inform interested parties of the nature of the public hearing and the right to participate shall be published in the same newspaper(s) as the notice of the original request for approval of the submission under subdivision 1 a (2) of this subsection. In addition, notice of the public hearing shall be sent to those persons requesting individual notice.

C. At the end of the 30-day (or extended) comment period and within the 90-day (or extended) period provided for in subsection A of this section, the director shall approve or deny the submission based upon the evaluation in subsection A of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. Where the director makes a determination to deny the request, the director shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the director may allow the requestor additional time to bring the submission into compliance with applicable requirements.

D. No POTW pretreatment program or authorization to grant removal allowances shall be approved by the director if following the 30-day (or extended) evaluation period provided for in subdivision B 1 b of this section and any public hearing held pursuant to subdivision B 2 of this section, the regional administrator sets forth in writing objections to the approval of such submission and the reasons for such objections. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on his objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances 90 days after the date the objections are issued.

E. The director shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the director shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The director shall identify in any notice of POTW pretreatment program approval any authorization to modify categorical pretreatment standards which the POTW may make, in accordance with 9VAC25-31-790, for removal of pollutants subject to pretreatment standards.

F. The director shall ensure that the submission and any comments upon such submission are available to the public for inspection and copying.

9VAC25-31-840. Reporting requirements for POTWs and industrial users.

A. (Reserved.)

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 9VAC25-31-780 A 4, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 7 of this subsection. At least 90 days prior to commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 5 of this subsection. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subdivisions 4 and 5 of this subsection.

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.

3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

a. Regulated process streams; and

b. Other streams as necessary to allow use of the combined wastestream formula of 9VAC25-31-780 E. (See subdivision 5 d of this subsection.)

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. Measurement of pollutants.

a. The user shall identify the pretreatment standards applicable to each regulated process;

b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard;

c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection;

d. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9VAC25-31-780 E in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has

8237 been calculated in accordance with 9VAC25-31-780 E, this adjusted limit along with
8238 supporting data shall be submitted to the control authority;

8239 e. Sampling and analysis shall be performed in accordance with the techniques
8240 prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136
8241 does not contain sampling or analytical techniques for the pollutant in question, or
8242 where the administrator determines that the Part 136 sampling and analytical
8243 techniques are inappropriate for the pollutant in question, sampling and analysis shall
8244 be performed by using validated analytical methods or any other applicable sampling
8245 and analytical procedures, including procedures suggested by the POTW or other
8246 parties, approved by the administrator;

8247 f. The control authority may allow the submission of a baseline report which utilizes
8248 only historical data so long as the data provides information sufficient to determine the
8249 need for industrial pretreatment measures; and

8250 g. The baseline report shall indicate the time, date and place of sampling, and methods
8251 of analysis, and shall certify that such sampling and analysis is representative of
8252 normal work cycles and expected pollutant discharges to the POTW.

8253 6. Certification. A statement, reviewed by an authorized representative of the industrial
8254 user (as defined in subsection M of this section) and certified to by a qualified professional,
8255 indicating whether pretreatment standards are being met on a consistent basis, and, if not,
8256 whether additional operation and maintenance (O and M) or additional pretreatment, or
8257 both, are required for the industrial user to meet the pretreatment standards and
8258 requirements.

8259 7. Compliance schedule. If additional pretreatment or O and M, or both, will be required to
8260 meet the pretreatment standards, the shortest schedule by which the industrial user will
8261 provide such additional pretreatment or O and M, or both. The completion date in this
8262 schedule shall not be later than the compliance date established for the applicable
8263 pretreatment standard.

8264 a. Where the industrial user's categorical pretreatment standard has been modified by
8265 a removal allowance (9VAC25-31-790), the combined wastestream formula (9VAC25-
8266 31-780 E), or a fundamentally different factors variance (9VAC25-31-850), or any
8267 combination of them, at the time the user submits the report required by this
8268 subsection, the information required by subdivisions 6 and 7 of this subsection shall
8269 pertain to the modified limits.

8270 b. If the categorical pretreatment standard is modified by a removal allowance
8271 (9VAC25-31-790), the combined wastestream formula (9VAC25-31-780 E), or a
8272 fundamentally different factors variance (9VAC25-31-850), or any combination of
8273 them, after the user submits the report required by this subsection, any necessary
8274 amendments to the information requested by subdivisions 6 and 7 of this subsection
8275 shall be submitted by the user to the control authority within 60 days after the modified
8276 limit is approved.

8277 C. Compliance schedule for meeting categorical pretreatment standards. The following
8278 conditions shall apply to the schedule required by subdivision B 7 of this section:

8279 1. The schedule shall contain increments of progress in the form of dates for the
8280 commencement and completion of major events leading to the construction and operation
8281 of additional pretreatment required for the industrial user to meet the applicable categorical
8282 pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing
8283 final plans, executing contract for major components, commencing construction,
8284 completing construction, etc.);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subdivisions B 4 through B 6 of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9VAC25-31-780 C, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subdivision B 4 of this section except that the control authority may require more detailed reporting of flows. In cases where the pretreatment standard requires compliance with a Best Management Practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted. For industrial users for which the department is the control authority, as of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the industrial user to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the industrial users for which the department is the control authority may be required to report electronically if specified by a particular control mechanism.

2. The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any

8335 increase in the pollutant due to activities of the industrial user. This authorization is subject
8336 to the following conditions:

8337 a. The control authority may authorize a waiver where a pollutant is determined to be
8338 present solely due to sanitary wastewater discharged from the facility provided that
8339 the sanitary wastewater is not regulated by an applicable categorical standard and
8340 otherwise includes no process wastewater.

8341 b. The monitoring waiver is valid only for the duration of the effective period of the
8342 permit or other equivalent individual control mechanism, but in no case longer than
8343 five years. The user must submit a new request for the waiver before the waiver can
8344 be granted for each subsequent control mechanism.

8345 c. In making a demonstration that a pollutant is not present, the industrial user must
8346 provide data from at least one sampling of the facility's process wastewater prior to
8347 any treatment present at the facility that is representative of all wastewater from all
8348 processes. The request for a monitoring waiver must be signed in accordance with
8349 subsection L of this subsection, and include the certification statement in 9VAC25-31-
8350 780 A 2 b. Nondetectable sample results may only be used as a demonstration that a
8351 pollutant is not present if the EPA approved method from 40 CFR Part 136 with the
8352 lowest minimum detection level for that pollutant was used in the analysis.

8353 d. Any grant of the monitoring waiver by the control authority must be included as a
8354 condition in the user's control mechanism. The reasons supporting the waiver and any
8355 information submitted by the user in its request for the waiver must be maintained by
8356 the control authority for three years after expiration of the waiver.

8357 e. Upon approval of the monitoring waiver and revision of the user's control
8358 mechanism by the control authority, the industrial user must certify on each report with
8359 the statement below, that there has been no increase in the pollutant in its
8360 wastestream due to activities of the industrial user:

8361 "Based on my inquiry of the person or persons directly responsible for managing
8362 compliance with the pretreatment standard for 40 CFR [specify applicable national
8363 pretreatment standard part(s)], I certify that, to the best of my knowledge and belief,
8364 there has been no increase in the level of [list pollutant(s)] in the wastewaters due to
8365 the activities at the facility since filing of the last periodic report under 9VAC25-31-840
8366 E 1."

8367 f. In the event that a waived pollutant is found to be present or is expected to be present
8368 based on changes that occur in the user's operations, the user must immediately:
8369 Comply with the monitoring requirements of subdivision 1 of this subsection or other
8370 more frequent monitoring requirements imposed by the control authority, and notify
8371 the control authority.

8372 g. This provision does not supersede certification processes and requirements
8373 established in categorical pretreatment standards, except as otherwise specified in the
8374 categorical pretreatment standard.

8375 3. The control authority may reduce the requirement in the subdivision 1 of this subsection
8376 to a requirement to report no less frequently than once a year, unless required more
8377 frequently in the pretreatment standard or by the approval authority, where the industrial
8378 user meets all of the following conditions:

8379 a. The industrial user's total categorical wastewater flow does not exceed any of the
8380 following:

- (1) 0.01% of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;
- (2) 0.01% of the design dry weather organic treatment capacity of the POTW; and
- (3) 0.01% of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with 9VAC25-31-770 C and D.
- b. The industrial user has not been in significant noncompliance, as defined in 9VAC25-31-800 F 2 g, for any time in the past two years;
- c. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to subdivision G 3 of this section;
- d. The industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subdivision 3 a or b of this subsection. Upon notification, the industrial user must immediately begin complying with the minimum reporting in subdivision 1 of this subsection; and
- e. The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under subdivision 3 of this subsection for a period of three years after the expiration of the term of the control mechanism.
4. Where the control authority has imposed mass limitations on industrial users as provided for by 9VAC25-31-780 C, the report required by subdivision 1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.
5. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9VAC25-31-780 C, the report required by subdivision 1 of this subsection shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subdivision 1 of this subsection shall include the user's actual average production rate for the reporting period.
- F. Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9VAC25-31-770 B, by the industrial user.
- G. Monitoring and analysis to demonstrate continued compliance with pretreatment standards and requirements.
1. Except in the case of nonsignificant categorical users, the reports required in subsections B, D, E, and H of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subdivision B 6 and subsection D of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

b. The control authority performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

3. The reports required in subsection E of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections B and D of this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by subsections E and H of this section, the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

5. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the control authority. Sampling shall be performed in accordance with EPA-approved techniques. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

6. If an industrial user subject to the reporting requirement in subsection E or H of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision 5 of this subsection, the results of this monitoring shall be included in the report.

H. Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority must require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users must submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine the compliance status of the user. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. For industrial users for which the department is the control authority, as of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection shall be submitted electronically by the industrial user to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the industrial users for which the department is the control authority may be required to report electronically if specified by a particular control mechanism.

I. Annual POTW reports. POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements. The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under subdivision E 3 of this section and identify which industrial users are nonsignificant categorical industrial users;
2. A summary of the status of industrial user compliance over the reporting period;
3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;
4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the department;
5. Any other relevant information requested by the director;
6. Any additional applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030; and

7. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the POTW pretreatment program to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the department may also require POTW pretreatment programs to electronically submit annual reports under this section if specified by a particular permit.

J. Notification of changed discharge. All industrial users shall promptly notify the control authority (and the POTW if the POTW is not the control authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the Code of Virginia and this section.

K. Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by 9VAC25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and

3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the department including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the department.

L. Signatory requirements for industrial user reports. The reports required by subsections B, D, and E of this section shall include the certification statement as set forth in 9VAC25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the industrial user submitting the reports required by subsections B, D and E of this section is a corporation. For the purpose of this subdivision, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. By a general partner or proprietor if the industrial user submitting the reports required by subsections B, D and E of this section is a partnership or sole proprietorship; respectively.

3. By a duly authorized representative of the individual designated in subdivision 1 or 2 of this subsection if:

a. The authorization is made in writing by the individual described in subdivision 1 or 2 of this subsection;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the control authority.

4. If an authorization under subdivision 3 of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision 3 of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports. Reports submitted to the department by the POTW in accordance with subsection I of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.

N. Provision governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

1. The provisions of 18 USC § 1001 relating to fraud and false statements;

2. The provisions of the law or § 309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and

3. The provisions of § 309(c)(6) of the CWA regarding responsible corporate officers.

O. Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section including documentation associated with Best Management Practices. Such records shall include for all samples:

a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;

b. The dates analyses were performed;

c. Who performed the analyses;

d. The analytical techniques/methods used; and

e. The results of such analyses.

2. Any industrial user or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the director and the regional administrator (and POTW in the case of an industrial user). This period of retention shall

be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

3. Any POTW to which reports are submitted by an industrial user pursuant to subsections B, D, E, and H of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the director and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director or the regional administrator.

P. 1. The industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subsection J of this section. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of subsections B, D, and E of this section.

2. Dischargers are exempt from the requirements of subdivision 1 of this subsection during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under § 3001 of RCRA (42 USC § 6901 et seq.) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Q. Annual certification by nonsignificant categorical industrial users. A facility determined to be a nonsignificant categorical industrial user pursuant to 9VAC25-31-10 must annually submit the following certification statement, signed in accordance with the signatory requirements in subsection L of this section. This certification must accompany an alternative report required by the control authority:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

1. The facility described as _____ [facility name] met the definition of a nonsignificant categorical industrial user as described in 9VAC25-31-10;

2. The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

3. The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.

_____ "

R. The control authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (Electronic reporting).

9VAC25-31-850. Variances from categorical pretreatment standards for fundamentally different factors.

A. The term "requester" means an industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

B. Any interested person believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard, may request a fundamentally different factors variance under this section.

C. Criteria.

1. General criteria. A request for a variance based upon fundamentally different factors shall be approved only if:

a. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been requested;

b. Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the factors considered by EPA in establishing the standards; and

c. The request for a variance is made in accordance with the procedural requirements in subsections G and H of this section.

2. Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the standard shall be approved only if:

a. The alternative limit requested is no less stringent than justified by the fundamental difference;

b. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under 9VAC25-31-770;

c. The alternative limit will not result in a nonwater quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the pretreatment standards; and

d. Compliance with the standards (either by using the technologies upon which the standards are based or by using other control alternatives) would result in either:

(1) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the standards; or

8718 (2) A nonwater quality environmental impact (including energy requirements)
8719 fundamentally more adverse than the impact considered during development of the
8720 standards.

8721 3. Criteria applicable to more stringent limits. A variance request for the establishment of
8722 limits more stringent than required by the standards shall be approved only if:

8723 a. The alternative limit request is no more stringent than justified by the fundamental
8724 difference; and

8725 b. Compliance with the alternative limit would not result in either:

8726 (1) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost
8727 considered during development of the standards; or

8728 (2) A nonwater quality environmental impact (including energy requirements)
8729 fundamentally more adverse than the impact considered during development of the
8730 standards.

8731 D. Factors considered fundamentally different. Factors which may be considered
8732 fundamentally different are:

8733 1. The nature or quality of pollutants contained in the raw waste load of the user's process
8734 wastewater;

8735 2. The volume of the user's process wastewater and effluent discharged;

8736 3. Nonwater quality environmental impact of control and treatment of the user's raw waste
8737 load;

8738 4. Energy requirements of the application of control and treatment technology;

8739 5. Age, size, land availability, and configuration as they relate to the user's equipment or
8740 facilities; processes employed; process changes; and engineering aspects of the
8741 application of control technology; and

8742 6. Cost of compliance with required control technology.

8743 E. Factors which will not be considered fundamentally different. A variance request or portion
8744 of such a request under this section may not be granted on any of the following grounds:

8745 1. The feasibility of installing the required waste treatment equipment within the time the
8746 CWA allows;

8747 2. The assertion that the standards cannot be achieved with the appropriate waste
8748 treatment facilities installed, if such assertion is not based on factors listed in subsection
8749 D of this section;

8750 3. The user's ability to pay for the required waste treatment; or

8751 4. The impact of a discharge on the quality of the POTW's receiving waters.

8752 F. Local law. Nothing in this section shall be construed to impair the right of any locality under
8753 the Code of Virginia or § 510 of the CWA to impose more stringent limitations than required by
8754 federal law.

8755 G. Application deadline.

8756 1. Requests for a variance and supporting information must be submitted in writing to the
8757 department or to the administrator, as appropriate.

8758 2. In order to be considered, a request for a variance must be submitted no later than 180
8759 days after the date on which a categorical pretreatment standard is published in the
8760 Federal Register.

8761 3. Where the user has requested a categorical determination pursuant to 9VAC25-31-780
8762 A, the user may elect to await the results of the category determination before submitting
8763 a variance request under this section. Where the user so elects, he must submit the

8764 variance request within 30 days after a final decision has been made on the categorical
8765 determination pursuant to 9VAC25-31-780 A 4.

8766 H. Contents submission. Written submissions for variance requests, whether made to the
8767 administrator or the department, must include:

- 8768 1. The name and address of the person making the request;
- 8769 2. Identification of the interest of the requester which is affected by the categorical
8770 pretreatment standard for which the variance is requested;
- 8771 3. Identification of the POTW currently receiving the waste from the industrial user for
8772 which alternative discharge limits are requested;
- 8773 4. Identification of the categorical pretreatment standards which are applicable to the
8774 industrial user;
- 8775 5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is
8776 sought;
- 8777 6. The alternative discharge limits proposed by the requester for each pollutant or pollutant
8778 parameter identified in subdivision 5 of this subsection;
- 8779 7. A description of the industrial user's existing water pollution control facilities;
- 8780 8. A schematic flow representation of the industrial user's water system including water
8781 supply, process wastewater systems, and points of discharge; and
- 8782 9. A statement of facts clearly establishing why the variance request should be approved,
8783 including detailed support data, documentation, and evidence necessary to fully evaluate
8784 the merits of the request, e.g., technical and economic data collected by the EPA and
8785 used in developing each pollutant discharge limit in the pretreatment standard.

8786 I. Deficient requests. The administrator or the director will only act on written requests for
8787 variances that contain all of the information required. Persons who have made incomplete
8788 submissions will be notified by the administrator or the director that their requests are deficient
8789 and unless the time period is extended, will be given up to 30 days to remedy the deficiency. If
8790 the deficiency is not corrected within the time period allowed by the administrator or the director,
8791 the request for a variance shall be denied.

8792 J. Public notice. Upon receipt of a complete request, the administrator or the director will
8793 provide notice of receipt, opportunity to review the submission, and opportunity to comment.

8794 1. The public notice shall be circulated in a manner designed to inform interested and
8795 potentially interested persons of the request. Procedures for the circulation of public notice
8796 shall include mailing, by electronic or postal delivery, notices to:

- 8797 a. The POTW into which the industrial user requesting the variance discharges;
- 8798 b. Adjoining states whose waters may be affected; and
- 8799 c. Designated 208 planning agencies, federal and state fish, shellfish and wildlife
8800 resource agencies; and to any other person or group who has requested individual
8801 notice, including those on appropriate mailing lists.

8802 2. The public notice shall provide for a period not less than 30 days following the date of
8803 the public notice during which time interested persons may review the request and submit
8804 their written views on the request.

8805 3. Following the comment period, the administrator or the director will make a
8806 determination on the request taking into consideration any comments received. Notice of
8807 this final decision shall be provided to the requester (and the industrial user for which the
8808 variance is requested if different), the POTW into which the industrial user discharges and
8809 all persons who submitted comments on the request.

K. Review of requests.

1. Where the director finds that fundamentally different factors do not exist, he may deny the request and notify the requester (and industrial user where they are not the same) and the POTW of the denial.

2. Where the director finds that fundamentally different factors do exist, he shall forward the request, with a recommendation that the request be approved, to the administrator.

9VAC25-31-860. Confidentiality.

Any information submitted to the department pursuant to this part may be claimed as secret formulae, secret processes or secret methods, other than effluent data, by the submitter. Any such claim will be considered under the conditions of 9VAC25-31-80.

9VAC25-31-870. Net/gross calculation.

A. Application. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section. Any industrial user wishing to obtain credit for intake pollutants must make application to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of subsection B of this section are met.

B. Criteria.

1. Either

a. The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or

b. The industrial user demonstrates that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards or standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this section.

4. Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

9VAC25-31-880. Upset provision.

A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection C of this section are met.

C. An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user can identify the cause or causes of the upset;
2. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
3. The industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):
 - a. A description of the indirect discharge and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken or planned, or both, to reduce, eliminate and prevent recurrence of the noncompliance.

D. In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

E. In the usual exercise of prosecutorial discretion, the director should review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final director action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

F. The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

9VAC25-31-890. Bypass.

A. Definitions. For the purpose of this section:

1. "Bypass" means the intentional diversion of wastestreams from any portion of an industrial user "s treatment facility.
2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections C and D of this section.

C. Notice.

1. If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least 10 days before the date of the bypass.
2. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of

8903 the bypass, including exact dates and times, and, if the bypass has not been corrected,
8904 the anticipated time it is expected to continue; and steps taken or planned to reduce,
8905 eliminate, and prevent reoccurrence of the bypass. The control authority may waive the
8906 written report on a case-by-case basis if the oral report has been received within 24 hours.

8907 D. Prohibition of bypass.

8908 1. Bypass is prohibited, and the control authority may take enforcement action against an
8909 industrial user for a bypass, unless;

8910 a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property
8911 damage;

8912 b. There were no feasible alternatives to the bypass, such as the use of auxiliary
8913 treatment facilities, retention of untreated wastes, or maintenance during normal
8914 periods of equipment downtime. This condition is not satisfied if adequate back-up
8915 equipment should have been installed in the exercise of reasonable engineering
8916 judgment to prevent a bypass which occurred during normal periods of equipment
8917 downtime or preventative maintenance; and

8918 c. The industrial user submitted notices as required under subsection C of this section.

8919 2. The control authority may approve an anticipated bypass, after considering its adverse
8920 effects, if the control authority determines that it will meet the three conditions listed in
8921 subdivision 1 of this subsection.

8922 **9VAC25-31-900. Modification of POTW pretreatment programs.**

8923 A. Either the director or a POTW with an approved POTW pretreatment program may initiate
8924 program modification at any time to reflect changing conditions at the POTW. Program
8925 modification is necessary whenever there is a significant change in the operation of a POTW
8926 pretreatment program that differs from the information in the POTW's submission, as approved
8927 under 9VAC25-31-830.

8928 B. Substantial modifications defined. Substantial modifications include:

8929 1. Modifications that relax POTW legal authorities (as described in 9VAC25-31-800 F 1,
8930 except for modifications that directly reflect a revision to this part or to 40 CFR Chapter I,
8931 Subchapter N, and are reported pursuant to subsection D of this section;

8932 2. Modifications that relax local limits, except for the modifications to local limits for pH and
8933 reallocations of the maximum allowable industrial loading of a pollutant that do not
8934 increase the total industrial loadings for the pollutant, which are reported pursuant to
8935 subsection D of this section. Maximum allowable industrial loading means the total mass
8936 of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified
8937 by the POTW) may discharge pursuant to limits developed under 9VAC25-31-770 C;

8938 3. Changes to the POTW's control mechanism as described in 9VAC25-31-800 F 1 c;

8939 4. A decrease in the frequency of self-monitoring or reporting required of industrial users;

8940 5. A decrease in the frequency of industrial user inspections or sampling by the POTW;

8941 6. Changes to the POTW's confidentiality procedures; and

8942 7. Other modifications designated as substantial modifications by the director on the basis
8943 that the modification could have a significant impact on the operation of the POTW's
8944 pretreatment program, could result in an increase in pollutant loadings at the POTW, or
8945 could result in less stringent requirements being imposed on industrial users of the POTW.

8946 C. Approval procedures for substantial modifications.

1. The POTW shall submit to the department a statement of the basis for the desired program modification, a modified program description (see 9VAC25-31-810 B), or such other documents the director determines to be necessary under the circumstances.

2. The director shall approve or disapprove the modification based on the requirements of 9VAC25-31-800 F and using the procedures in 9VAC25-31-830 B through F, except as provided in subdivisions C 3 and C 4 of this section. The modification shall become effective upon approval by the director.

3. The director need not publish a notice of decision under 9VAC25-31-830 E provided (i) the notice of request for approval under 9VAC25-31-830 B 1 states that the request will be approved if no comments are received by a date specified in the notice; (ii) no substantive comments are received; and (iii) the request is approved without change.

4. Notices required by 9VAC25-31-830 may be performed by the POTW provided that the director finds that the POTW notice otherwise satisfies the requirements of 9VAC25-31-830.

D. Approval procedures for nonsubstantial modifications.

1. The POTW shall notify the department of any nonsubstantial modification at least 45 days prior to implementation by the POTW in a statement similar to that provided for in subdivision C 1 of this section.

2. Within 45 days after the submission of the POTW's statement, the director shall notify the POTW of his decision to approve or disapprove the nonsubstantial modification.

3. If the director does not notify the POTW within 45 days of his decision to approve or deny the modification or to treat the modification as substantial under subdivision B 7 of this section, the POTW may implement the modification.

E. Incorporation in permit. All modifications shall be incorporated into the POTW's VPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 9VAC25-31-400.

**Part VIII
Enforcement**

9VAC25-31-910. Enforcement.

A. The board may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the law;

2. Issuing special orders in accordance with the law;

3. Issuing emergency special orders in accordance with the law;

4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;

5. Seeking civil penalties under the law; or

6. Seeking remedies under the law, the CWA or under other laws including the common law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The board will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;

2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; or in any administrative enforcement action when authorized by the board's procedural rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the board will publish public notice of such

8993 settlement or order in a newspaper of general circulation in the county, city or town in
8994 which the discharge is located, and in The Virginia Register of Regulations. This notice
8995 will identify the owner, specify the enforcement action to be taken and specify where a
8996 copy of the settlement or order can be obtained. Appeals of the enforcement action will be
8997 public noticed in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.). A
8998 consent special order is a special order issued without a public hearing and with the written
8999 consent of the affected owner. For the purpose of this chapter, an emergency special
9000 order is not a consent special order. The board shall consider all comments received
9001 during the comment period before taking final action.

9002 C. When a permit is amended solely to reflect a new owner, and the previous owner had been
9003 issued a consent special order that, at the time of permit amendment was still in full force and
9004 effect, a consent special order issued to the new owner does not have to go to public notice
9005 provided that:

- 9006 a. The permit amendment does not have to go to public notice; and
9007 b. The terms of the new consent order are the same as issued to the previous owner.

9008 D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by
9009 agreement at a board meeting without further notice when a public hearing has been scheduled
9010 to issue a special order to the affected owner, whether or not the public hearing is actually held.

9011 **9VAC25-31-915. Local enforcement.**

9012 A. In the event of a dispute concerning the existence of a violation between a permittee and
9013 a locality that has adopted a local ordinance for testing and monitoring of the land application of
9014 biosolids or industrial residuals, the activity alleged to be in violation shall be halted pending a
9015 determination by the director.

9016 B. Upon determination by the director that there has been a violation of § 62.1-44.16, 62.1-
9017 44.19:3, 62.1-44.19:3.1, or 62.1-44.19:3.3 of the Code of Virginia; of any regulation promulgated
9018 under those sections; or of any permit or certificate issued for land application of industrial
9019 residuals, and that such violation poses an imminent threat to public health, safety, or welfare,
9020 the department shall commence appropriate action to abate the violation and immediately notify
9021 the chief administrative officer of any locality potentially affected by the violation.

9022 C. Local governments shall promptly notify the department of all results from the testing and
9023 monitoring of the land application of biosolids or industrial residuals performed by persons
9024 employed by local governments and any violation of § 62.1-44.16, 62.1-44.19:3, 62.1-44.19:3.1,
9025 or 62.1-44.19:3.3 of the Code of Virginia or of any permit or certificate issued for land application
9026 of industrial residuals discovered by local governments.

9027 D. Local governments receiving complaints concerning land application of biosolids or
9028 industrial residuals shall notify the department and the permit holder within 24 hours of receiving
9029 the complaint.

9030 Part IX
9031 Miscellaneous

9032 **9VAC25-31-920. Delegation of authority.**

9033 The director may perform any act of the board provided under this chapter, except as limited
9034 by § 62.1-44.14 of the Code of Virginia. Until March 23, 2000, the director shall have no authority
9035 to approve all or portions of permits either in the first instance, as modified or reissued, or on
9036 appeal; until that time, such authority is delegated to the deputy director or his designee.

9037 **9VAC25-31-930. Transition.**

9038 Upon the effective date of this chapter the following will occur:

- 9039 A. All applications received after the effective date of the new chapter will be processed in
9040 accordance with these new procedures.
- 9041 B. A National Pollutant Discharge Elimination System Permit issued by the board has the
9042 same effect as a VPDES permit.

9043 Part X

9044 Permitting and Enforcement Authority

9045 **9VAC25-31-940. Authority of the Department of Mines, Minerals and Energy for coal**
9046 **surface mining operations.**

9047 For the purpose of Part X of this chapter, NPDES and VPDES permits are synonymous.

9048 A. The Director of the Department of Mines, Minerals and Energy (DMME) has the authority
9049 to issue, revoke and reissue, modify, or terminate NPDES permits for the discharge of industrial
9050 wastes or other wastes other than sewage from coal surface mining operations as defined in §
9051 45.1-229 of the Code of Virginia. Any NPDES permit issued, modified, or revoked and reissued
9052 by the Director of DMME that meets the conditions set forth in this chapter shall be as valid and
9053 enforceable as if issued by the board.

9054 B. Prior to issuing permits, the Director of DMME shall adhere to the following requirements:

9055 1. That every permit issued, revoked and reissued, or modified shall conform to the
9056 requirements of this chapter, the CWA, and all pertinent regulations adopted by the board
9057 under law and those adopted under the CWA;

9058 2. That the Director of DMME shall transmit to the department a copy of each application
9059 for a NPDES permit received by it, a copy of every draft NPDES permit prepared by it,
9060 and written notice of every action taken or contemplated to be taken by the Director of
9061 DMME with respect to such a permit; and

9062 3. That no NPDES permit shall be issued, revoked and reissued, or modified if, within 30
9063 days of the date of the transmittal to the department of the complete application and the
9064 draft NPDES permit to it, the board objects in writing to the issuance, revocation and
9065 reissuance, or modification of such permit. Where required, the board shall stipulate more
9066 stringent permit conditions as necessary to maintain applicable water quality standards
9067 and provisions of the law. Each such stipulation shall be accompanied by a justifying
9068 documentation to the Director of DMME. Such stipulations shall be binding upon the
9069 Director of DMME. However, nothing herein shall affect or impair any rights that the
9070 applicant may have to a public hearing before the board pursuant to the law or to judicial
9071 review of such decision pursuant to the law.

9072 C. The Director of DMME shall enforce NPDES permits issued to coal surface mining
9073 operations for the discharge of industrial wastes and other wastes; provided, however, that the
9074 board reserves the right to assert its enforcement authority as provided in § 45.1-254 F of the
9075 Code of Virginia and provided further that the board reserves the right to take emergency
9076 enforcement action where the Director of DMME has not taken or cannot take effective
9077 emergency enforcement action.

9078 Part XI

9079 VPDES Electronic Reporting Requirements

9080 **9VAC25-31-950. Purpose and scope.**

9081 A. This part, in conjunction with the reporting requirements specified in this chapter and
9082 9VAC25-870, specifies the requirements for:

- 9083 1. Electronic reporting of information by VPDES permittees;
- 9084 2. Facilities or entities seeking coverage under VPDES general permits;

- 9085 3. Facilities or entities submitting stormwater certifications or waivers from VPDES permit
9086 requirements;
- 9087 4. Industrial users located in municipalities without approved local pretreatment programs;
9088 and
- 9089 5. Approved pretreatment programs.

9090 B. Proper collection, management, and sharing of the data and information listed in Appendix
9091 A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030, ensures that there is timely,
9092 complete, accurate, and nationally consistent set of data about the NPDES program.

9093 **9VAC25-31-960. Definitions.**

9094 In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the
9095 following definitions apply to this part.

9096 "NPDES data group" means the group of related data elements identified in Table 1 in
9097 Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. These NPDES
9098 data groups have similar regulatory reporting requirements and have similar data sources.

9099 "Minimum set of NPDES data" means the data and information listed in Appendix A to 40 CFR
9100 Part 127 as adopted by reference in 9VAC25-31-1030.

9101 "Program reports" means the information reported by VPDES-regulated entities and listed in
9102 Table 1 of Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, except
9103 NPDES Data Groups 1, 2, and 3.

9104 "VPDES-regulated entity" means any entity regulated by the VPDES Program in accordance
9105 with this chapter or 9VAC25-870.

9106 **9VAC25-31-970. Types of data to be reported electronically by VPDES permittees, facilities,
9107 and entities subject to this part.**

9108 A. VPDES-regulated entities must electronically submit the minimum set of NPDES data for
9109 these reports if such reporting requirements are applicable. The following reports are the source
9110 of the minimum set of data from regulated entities:

- 9111 1. Discharge Monitoring Report (9VAC25-31-190 and 9VAC25-870-430);
- 9112 2. Concentrated Animal Feeding Operation (CAFO) Annual Program Report (9VAC25-31-
9113 200);
- 9114 3. Pretreatment Program Annual Report (9VAC25-31-840);
- 9115 4. Sewer Overflow and Bypass Incident Event Report (9VAC25-31-190 and 9VAC25-870-
9116 430);
- 9117 5. CWA § 316(b) Annual Reports (9VAC25-31-165); and
- 9118 6. Municipal Separate Storm Sewer System (MS4) Program Reports (9VAC25-870-400
9119 and 9VAC25-870-440).

9120 B. Facilities or entities seeking coverage under or termination from general permits and
9121 facilities or entities submitting stormwater certifications or waivers from VPDES permit
9122 requirements must electronically submit the minimum set of NPDES data for the following notices,
9123 certifications, and waivers if such reporting requirements are applicable:

- 9124 1. Notice of intent (NOI) to discharge by facilities seeking coverage under a general
9125 VPDES permit rather than an individual VPDES permit, as described in 9VAC25-31-170
9126 B 2 and 9VAC25-870-410;
- 9127 2. Notice of termination (NOT), as described in 9VAC25-31-410 and 9VAC25-870-650;
- 9128 3. No exposure certification (NOE), as described in 9VAC25-31-120 E 1 c; and
- 9129 4. Certification in support of waiver for stormwater discharge associated with small
9130 construction activity, as described in 9VAC25-870-10.

9131 C. Industrial users located in municipalities without approved local pretreatment programs
9132 must electronically submit the minimum set of NPDES data for the following self-monitoring
9133 reports if such reporting requirements are applicable:

- 9134 1. Periodic reports on continued compliance, as described in 9VAC25-31-840 E; and
9135 2. Reporting requirements for industrial users not subject to categorical pretreatment
9136 standards, as described in 9VAC25-31-840 H.

9137 D. The minimum set of NPDES data for VPDES-regulated facilities is identified in Appendix A
9138 to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

9139 **9VAC25-31-980. Signature and certification standards for electronic reporting.**

9140 The signatory and certification requirements identified in 40 CFR Part 3 (including, in all cases,
9141 40 CFR Part 3 Subpart D), 9VAC25-31-110 or 9VAC25-870-370 as appropriate, and 9VAC25-
9142 31-840 L shall also apply to electronic submissions of information by VPDES permittees, facilities,
9143 and entities subject to this part.

9144 **9VAC25-31-990. Requirements regarding quality assurance and quality control.**

9145 A. Responsibility for the quality of the information provided electronically in compliance with
9146 this part by the VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950
9147 A) rests with the owners and operators of those facilities or entities. VPDES permittees, facilities,
9148 and entities subject to this part must use quality assurance and quality control procedures to
9149 ensure the quality of the information submitted in compliance with this part.

9150 B. VPDES permittees, facilities, and entities subject to this part must electronically submit their
9151 VPDES information in compliance with the data quality requirements specified in 9VAC25-31-
9152 1000. VPDES permittees, facilities, and entities subject to this part must electronically submit their
9153 information unless a waiver is granted in compliance with this part (see 9VAC25-31-1010).

9154 **9VAC25-31-1000. Requirements regarding timeliness, accuracy, completeness, and**
9155 **national consistency.**

9156 VPDES permittees, facilities, and entities subject to this part must comply with all
9157 requirements in this part and electronically submit the minimum set of NPDES data in the following
9158 nationally consistent manner:

- 9159 1. Electronic submissions of the minimum set of NPDES data to the department must be
9160 timely.
- 9161 a. Measurement data including information from discharge monitoring reports, self-
9162 monitoring data from industrial users located outside of approved local pretreatment
9163 programs, and similar self-monitoring data. The electronic submission of these data is
9164 due when that monitoring information is required to be reported in compliance with
9165 statutes, regulations, the VPDES permit, another control mechanism, or an
9166 enforcement order.
- 9167 b. Program report data. The electronic submission of this data is due when that
9168 program report data is required to be reported in compliance with statutes, regulations,
9169 the VPDES permit, another control mechanism, or an enforcement order.
- 9170 2. Electronic submissions of the minimum set of NPDES data must be identical to the
9171 actual measurements taken by the owner, operator, or their duly authorized
9172 representative.
- 9173 3. Electronic submission of the minimum set of NPDES data must include all required data
9174 (see Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030) and
9175 these electronic submissions must be sent to the data system of the department.

4. Electronic submissions of the minimum set of NPDES data must be compliant with EPA data standards as set forth in this part and in a form, including measurement units, fully compatible with EPA's national NPDES data system.

9VAC25-31-1010. Waivers from electronic reporting.

A. VPDES permittees, facilities, and entities subject to this part must electronically submit the minimum set of NPDES data in compliance with this part, 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or 9VAC25-870-370 as appropriate, and 9VAC25-31-840 L unless a waiver is granted in compliance with this section.

B. Temporary waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Each temporary waiver must not extend beyond five years. However, VPDES-regulated entities may reapply for a temporary waiver. It is the duty of the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part to reapply for a new temporary waiver. The department cannot grant a temporary waiver to a VPDES-regulated entity without first receiving a temporary waiver request from the VPDES-regulated entity.

2. To apply for a temporary waiver, the owner, operator, or duly authorized representative of the VPDES permittee, facility, and entity subject to this part must submit the following information to their authorized VPDES program:

a. Facility name;

b. VPDES permit number (if applicable);

c. Facility address;

d. Name, address, and contact information for the owner, operator, or duly authorized facility representative;

e. Brief written statement regarding the basis for claiming such a temporary waiver; and

f. Any other information required by the department.

3. The department will determine whether to grant a temporary waiver. The department shall provide notice to the owner, operator, or duly authorized facility representative submitting a temporary waiver request in compliance with the requirements of subsection E of this section.

4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A) that have received a temporary waiver must continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) in hard-copy format to the department. The department shall electronically transfer these data to EPA in accordance with 40 CFR Part 127 Subpart C.

5. An approved temporary waiver is not transferrable.

C. Permanent waivers from electronic reporting may be granted by the department for programs for which the department has received authorization to implement the NPDES program, in compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A).

1. Permanent waivers are only available to facilities and entities owned or operated by members of religious communities that choose not to use certain modern technologies (e.g., computers, electricity). The department cannot grant a permanent waiver to a

- 9223 VPDES-regulated entity without first receiving a permanent waiver request from the
9224 VPDES-regulated entity.
- 9225 2. To apply for a permanent waiver, the owner, operator, or duly authorized representative
9226 of the VPDES permittee, facility, and entity subject to this part must submit the information
9227 listed in subdivision B 2 of this section to the department.
- 9228 3. An approved permanent waiver is not transferrable.
- 9229 4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A)
9230 that have received a permanent waiver shall continue to provide the minimum set of
9231 NPDES data (as well as other required information in compliance with statutes,
9232 regulations, the VPDES permit, another control mechanism, or an enforcement order) in
9233 hard-copy format to the department. The department shall electronically transfer these
9234 data to EPA in accordance with 40 CFR Part 127 Subpart C.
- 9235 D. Episodic waivers from electronic reporting may be granted by the department for programs
9236 for which the department has received authorization to implement the NPDES program, in
9237 compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see
9238 9VAC25-31-950 A). The following conditions apply to episodic waivers.
- 9239 1. No waiver request from the VPDES permittee, facility, or entity is required to obtain an
9240 episodic waiver from electronic reporting.
- 9241 2. Episodic waivers are not transferrable.
- 9242 3. Episodic waivers cannot last more than 60 days.
- 9243 4. The department will decide if the episodic waiver provision allows facilities and entities
9244 to delay their electronic submissions or to send hard-copy (paper) submissions. Episodic
9245 waivers are only available to facilities and entities in the following circumstances:
- 9246 a. Large scale emergencies involving catastrophic circumstances beyond the control
9247 of the facilities, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes)
9248 or other national disasters. The department will make the determination if an episodic
9249 waiver is warranted in this case and must receive the hard-copy (paper) submissions.
- 9250 b. Prolonged electronic reporting system outages (i.e., outages longer than 96 hours).
9251 The department, will make the determination if an episodic waiver is warranted in this
9252 case and must receive the hard-copy (paper) submissions.
- 9253 E. Responsibilities regarding review of waiver requests from VPDES permittees, facilities, and
9254 entities subject to this part (see 9VAC25-31-950 A).
- 9255 1. Under this section, a VPDES permittee, facility, or entity subject to this part (see
9256 9VAC25-31-950 A) may seek a waiver from electronic reporting. The department shall
9257 review the temporary or permanent waiver requests that it receives and either approve or
9258 reject these requests within 120 days.
- 9259 2. The department shall provide the permittee, facility, or entity with notice of the approval
9260 or rejection of their temporary or permanent waiver request from electronic reporting.
- 9261 3. The department shall electronically transfer to EPA the minimum set of NPDES data as
9262 specified in Appendix A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030,
9263 that they receive from permittees, facilities, or entities with a waiver from electronic
9264 reporting in accordance with 40 CFR 127.23.
- 9265 4. Under subsection D of this section, episodic waivers from electronic reporting may be
9266 granted by the department to VPDES permittees, facilities, and entities. The department
9267 granting an episodic waiver must provide notice, individually or through means of mass
9268 communication, regarding when such an episodic waiver is available, the facilities and
9269 entities that may use the episodic waiver, the likely duration of the episodic waiver, and

9270 any other directions regarding how facilities and entities should provide the minimum set
 9271 of NPDES data, as well as other required information in compliance with statutes,
 9272 regulations, the VPDES permit, another control mechanism, or an enforcement order, to
 9273 the department. No waiver request from the VPDES permittee, facility, or entity is required
 9274 to obtain an episodic waiver from electronic reporting. The department granting the
 9275 episodic waiver will determine whether to allow facilities and entities to delay their
 9276 electronic submissions for a short time (i.e., no more than 40 days) or to send hard-copy
 9277 (paper) submissions.

9278 **9VAC25-31-1020. Implementation of electronic reporting requirements for VPDES**
 9279 **permittees, facilities, and entities subject to this part.**

9280 A. VPDES permittees, facilities, and entities subject to this part, with the exception of those
 9281 covered by waivers under 9VAC25-31-1010, must electronically submit the following VPDES
 9282 information (reports, notices, waivers, and certifications) after the start dates listed in Table 1 of
 9283 this subsection. This part is not intended to undo existing requirements for electronic reporting.
 9284 Prior to this date, and independent of this part, the permittee may be required to report
 9285 electronically if specified by a particular permit or if required to do so by state law.

Table 1—Start Dates for Electronic Submissions of VPDES Information	
VPDES information	Start dates for electronic submissions
General Permit Reports	
Notices of Intent to discharge (NOIs) (9VAC25-31-170 B 2 and 9VAC25-870-410)	Start date will be provided in a schedule approved by the department.
Notices of Termination (NOTs) (9VAC25-31-410 and 9VAC25-870-650)	Start date will be provided in a schedule approved by the department.
No Exposure Certifications (NOEs) (9VAC25-31-120 E 1 c)	Start date will be provided in a schedule approved by the department.
Certifications in support of waiver for stormwater discharge associated with small construction activity (9VAC25-870-10)	Start date will be provided in a schedule approved by the department.
Discharge Monitoring Reports (9VAC25-31-190 L 4 and 9VAC25-870-430 L 4, as applicable)	
Individual VPDES Permit - Major Facility (9VAC25-31)	January 26, 2018
Individual VPDES Permit - Minor Facility (9VAC25-31)	January 26, 2018
Watershed General VPDES Permit - Nutrient Discharges (9VAC25-820)	March 26, 2018
General VPDES Permit - Industrial Stormwater Discharges (9VAC25-151)	July 26, 2018

All Other General VPDES Permits	Start dates will be provided in a schedule approved by the department.
Concentrated Animal Feeding Operation (CAFO) Annual Program Reports (9VAC25-31-200 E 4)	Start date will be provided in a schedule approved by the department.
Municipal Separate Storm Sewer System (MS4) Program Reports (9VAC25-870-400 D 7 c and 9VAC25-870-440)	Start date will be provided in a schedule approved by the department.
POTW Pretreatment Program Annual Reports (9VAC25-31-840 I)	Start date will be provided in a schedule approved by the department.
Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs (9VAC25-31-840 E and H)	Start date will be provided in a schedule approved by the department.
Sewer Overflow or Bypass Event Reports (9VAC25-31-190 L and M and 9VAC25-870-430 L and M)	Start date will be provided in a schedule approved by the department.
CWA 316(b) Annual Reports (9VAC25-31-165 B 6 b)	Start date will be provided in a schedule approved by the department.

B. VPDES permittees, facilities, and entities subject to this part shall electronically submit the information listed in Table 1 of this section in compliance with this part and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or 9VAC25-870-370 as appropriate, and 9VAC25-31-840 L.

C. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified by EPA in 81 FR 62395 (September 9, 2016). VPDES permittees, facilities, and entities subject to this part shall electronically submit the information listed in Table 1 in this section to the department.

D. VPDES permittees, facilities, and entities subject to this part that have received a waiver from electronic reporting shall continue to provide the minimum set of NPDES data (as well as other required information in compliance with statutes, regulations, the VPDES permit, another control mechanism, or an enforcement order) to the department in accordance with 9VAC25-31-1010.

9VAC25-31-1030. Adoption by reference of Appendix A to 40 CFR Part 127—Minimum Set of NPDES Data.

A. Except as otherwise provided, the regulations of the U.S. Environmental Protection Agency set forth in Appendix A to 40 CFR Part 127 are hereby incorporated as part of this chapter and 9VAC25-870.

B. In all locations in this chapter and 9VAC25-870 where Appendix A to 40 CFR Part 127 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified by EPA in 81 FR 62395 (September 9, 2016). The department will be the initial recipient for all NPDES data groups except for the sewage sludge/biosolids annual

- 9310 program reports (40 CFR Part 503) as Virginia is not authorized for the federal biosolids
9311 NPDES program.
- 9312 2. NPDES-regulated entity shall be the same as VPDES-regulated entity.
- 9313 3. The authorized NPDES program shall be the department for those NPDES program
9314 components for which EPA has granted the state authorization.
- 9315 FORMS (9VAC25-31)
- 9316 VPDES Sewage Sludge Permit Application Form (rev. 9/12).
- 9317 VPDES Sewage Sludge Permit Application for Permit Reissuance (eff. 8/12).
- 9318 Instructions for VPDES Sewage Sludge Permit Application Form (rev. 9/12).
- 9319 Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1
9320 (rev. 8/90).
- 9321 Virginia State Water Control Board Fish Farm Questionnaire (rev. 4/11).
- 9322 Application Form 2A - NPDES Form 2A Application for Permit to Discharge Municipal
9323 Wastewater, EPA Form 3510-2A (eff. 1/99).
- 9324 Form 2B NPDES, Applications for Permit to Discharge Wastewater Concentrated Animal
9325 Feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B (rev. 11/08).
- 9326 Application Form 2C - Wastewater Discharge Information, Consolidated Permits Program,
9327 EPA Form 3510-2C (rev. 8/90).
- 9328 Application Form 2D - New Sources and New Dischargers: Application for Permit to Discharge
9329 Process Wastewater, EPA Form 3510-2D (rev. 8/90).
- 9330 Application Form 2E - Facilities Which Do Not Discharge Process Wastewater, EPA Form
9331 3510-2E (rev. 8/90).
- 9332 Form 2F NPDES, Application for Permit to Discharge Stormwater, Discharges Associated with
9333 Industrial Activity, EPA Form 3510-2F (rev. 1/92).
- 9334 Local Government Ordinance Form (eff. 2000).
- 9335 Local Government Certification Form for New Municipal Solid Waste Landfill Permits (eff.
9336 2006).

